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DEPARTMENT OF JUSTICE AUTHORIZATION FOR APPROPRIATIONS, FISCAL YEAR 1992 (Part 2—Appendix)

HEARINGS

BEFORE THE

COMMITTEE ON THE JUDICIARY HOUSE OF REPRESENTATIVES

ONE HUNDRED SECOND CONGRESS

FIRST SESSION

JULY 11 AND 18, 1991

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DEPARTMENT OF JUSTICE AUTHORIZATION FOR APPROPRIATIONS, FISCAL YEAR 1992
(Part 2—Appendix)

JULY 11 AND 18, 1991

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

HON. JACK BROOKS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS, AND CHAIRMAN, COMMITTEE ON THE JUDICIARY, LETTER TO DICK THORNBURGH, ATTORNEY GENERAL, U.S. DEPARTMENT OF JUSTICE, DATED APRIL 29, 1991

ONE HUNDRED SECOND CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON THE JUDICIARY

2138 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6216

April 29, 1991

The Honorable Dick Thornburgh
Attorney General of the United States
Washington, D.C. 20530

Dear Mr. Attorney General:

The Committee is currently working on legislation to authorize appropriations for the Department of Justice for FY 1992. I anticipate that we will be holding hearings to consider this legislation during the month of May. As has been the tradition, I hope that we will be able to arrange for your testimony before the Full Committee at that time to discuss the Department's FY 1992 budget request.

In preparation for these hearings, a number of questions have been developed to explore various policy and operational matters. These questions, which are attached, represent the input of the six Judiciary subcommittee chairmen and cover a wide range of activities, which are broken down into two categories. The first set of 16 questions is directed to you, and it would be most helpful if you would personally respond to the questions. The second set of questions are more general in nature and may be answered by any appropriate agency official.

I believe this approach, already used by my Subcommittee in preparation for oversight of the Antitrust Division, will better prepare Committee members for the hearing and give you a chance to express the Department's views on various issues prior to your testimony. To keep to the indicated timetable for hearings, I request that you and the appropriate officials respond to the questions no later than May 13, 1991.

With best wishes, I am

Sincerely,

JACK BROOKS
Chairman

Enclosures

Questions for Attorney General Thornburgh

1. During the March 21, 1991, hearing before the Government Information, Justice and Agriculture Subcommittee of the Committee on Government Operations, the General Accounting Office concluded in its testimony that "one simply cannot trust that sensitive data will be safely secured at the Department of Justice."

How does the Department respond to this assessment?

What action has the Department taken to resolve this problem?

When will the Department be in full compliance with the Computer Security Act of 1987?

2. In August 1990, Special Counsel James G. Richmond reportedly stated that about 90 percent of the 100 priority failed savings and loans should result in criminal prosecutions. To date, which of those savings and loan cases have resulted in indictments? Do you expect to file in 90 percent of the cases? What is the projected time frame for the filing of these cases?

3. It has come to this Committee's attention that the Department of Justice has not provided the GAO with certain information which is critical to effective oversight of your efforts to address financial institution fraud. Much, if not most, of the work in this area is being conducted at the request of congressional committees. Department officials have contended to GAO representatives that GAO's access to records is basically no different than that of the "general public." Do you agree with this statement, and please explain the basis for your answer.

4. Generally, the Department and its component agencies have become more aggressive in denying the General Accounting Office access to a broad range of Department records and personnel. It has also questioned GAO's right to conduct a review of the extent of narcotics trafficking and money laundering in Panama, asserting that GAO has no authority to review activities that are not "statutorily created."

Does the Justice Department plan to continue its insistence on extremely narrow and questionable interpretations of the authority of the GAO to perform its work and in so doing to serve the Congress?

5. Recently, the CIA has refused to cooperate with investigations and studies conducted by GAO at the request of the Judiciary Committee. The CIA has asserted that legally it is only accountable to the House and Senate Intelligence Committees.

An official of the CIA recently wrote GAO and stated that CIA information "is discussed exclusively with the Intelligence Committees of the House and Senate in keeping with the determination of the Congress to vest by statute responsibility for intelligence oversight in these two committee(s)."

Has the Department issued any legal opinions or provided the CIA with advice concerning this issue? If so, please provide the Committee with these opinions and all related documentation on the matter.

Do you personally support the CIA's position, and is it legally justified?

If so, please provide the Committee all legal opinions and documentation in support of your position.

6. Has the Department received communications (either formal or informal) from individuals outside of the Department concerning the U.S. Sentencing Commission's proposed organizational sanctions? If so, please list those persons in the Judicial branch, in other agencies of the Executive branch including the Executive Office of the President, and the private sector from whom the Department has received such communications.

7. Of the individuals and organizations prosecuted for environmental crimes since 1985, please identify those defendants who had been previously convicted of a criminal environmental offense.

8. At its Quantico facility, the FBI offers the National Academy training program for State and local police. In the coming years, the FBI will have to increase its own use of the training academy to accommodate FBI new agent classes of 900 trainees or more. Will the FBI continue to make available to State and local police the very valuable National Academy Program at current levels?

9. There have been press reports regarding judicial findings of prosecutorial misconduct. In the most recent report by the Office of Professional Responsibility (OPR) at the Department of Justice (covering the year 1988), there was a "notable increase over the previous year in the number of complaints alleging abuse of prosecutorial or investigative authority." Even Federal judges have occasionally identified abuses. Please give us a report on the disposition of all cases in which there are allegations of misconduct by members of the Department, including U.S. Attorneys or their assistants, which were investigated in the past 5 years. You need not identify the individuals involved.

10. What proposals of the Federal Court Study Committee does the administration support? Please specifically address the subjects of nonacquiescence and the scheduled elimination of the parole commission, both of which are addressed in the final report of the Federal Court Study Committee.

11. The General Accounting Office issued three reports on management problems related to the Immigration and Naturalization Service (INS).[1] In addition, a Department study by the Justice Management Division (JMD) also identified management problems within INS. In commenting on one of the GAO reports (GAO/GGD-91-28), the Department said that it had established a panel to review the deficiencies and design a program strategy to resolve them. I understand the study has been completed.

(a) Please outline the major conclusions and recommendations.

(b) What action has the Department taken to implement the panel's, GAO's, and JMD's recommendations?

(c) What, if any, recommendations will you not implement, and why?

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[1] "Immigration Management: Strong Leadership and Management Reforms Needed to Address Serious Problems" (GAO/GGD-91-28, Jan. 23, 1991); "Information Management: Immigration and Naturalization Service Locks Ready Access to Essential Data" (GAO/IMTEC-90-75, Sept. 27, 1990); "Financial Management: INS Lacks Accountability and Controls Over Its Resources" (GAO/AFMD-91-20, Jan. 24, 1991).

(d) How long do you estimate it will take to correct the problems identified in these reports?

(e) What additional resources, if any, will be needed to implement the recommendations?

(f) What, if any legislative changes are needed to help improve the management problems at INS?

(g) What steps have you established to ensure these problems are fully addressed and corrected?

12. In January of this year, the General Accounting Office (GAO) issued a report on INS financial management in which it stated:

> INS' primary accounting system does not provide complete and accurate financial information on the results of its program and administrative operations. For fiscal year 1989, there were differences amounting to $94 million between the balances recorded in the INS primary accounting system and the financial reports submitted to the Department of the Treasury. As a result, INS does not know the total amount of funds it has available. In addition, managers are not receiving the financial management information needed to adequately control funds and evaluate program operations.

INS has long experienced problems in providing effective, quality service in adjudicating applications for alien benefits. This committee continues to hear complaints about long waiting lines, phone calls that go unanswered, and excessive application processing times. GAO's overall management report noted that funds for adjudication and naturalization have doubled over the past several years, while over the same period the workload has increased only moderately. Nonetheless, in April INS again increased application processing fees. These fees have nearly tripled over the past 3 years.

(1) If indeed INS cannot adequately control funds and evaluate program effectiveness, on what basis has INS determined that its nearly threefold increase in application fees is justified?

(2) Please supply the Committee a copy of the study upon which INS' April 11, 1991, fee-schedule increases were based.

(3) What was the application fee for each of the following on January 1, 1988: (1) I-130 (2) I-600, and

(4) N-400? What is the fee for each of these today? How long did it take INS to adjudicate each of the above petitions in January 1988, in Houston, Los Angeles, Miami, and New York? How long does it take in each of those cities today?

13. GAO, the Justice Inspector General (IG), the Justice Management Division, and others have reported serious weaknesses in INS' financial management system. For example:

In 1984, GAO reported that INS had delinquent accounts receivable of $118 million (GAO/GGD-84-86, July 1984);

In 1986, GAO reported that INS needed an improved debt collection system (GAO/GGD-86-12, Mar. 1986);

In 1989, the Justice Management Division said that INS did not maintain adequate control over financial resources in fiscal year 1988 (JMD report 89-9, Feb. 1989); and

Also in 1989, the Justice IG reported that INS was highly vulnerable to fraud and abuse (IG report, July 1989).

(1) Given these longstanding concerns, what steps have you taken over the past 18 months to address INS' financial management shortfalls?

(2) What actions have you taken to implement GAO's recommendation to establish a group of financial management experts to assist you in fixing INS' financial management problems?

14. Over the last 5 years, has the Department's Office of Legal Counsel issued any opinions related to the issuance and implementation of National Security Decision Directives (NSDD's)? If so, please provide a list of these opinions, including the title, subject, and the date of issuance.

15. On December 5, 1990, GAO released a report titled "Information Resources, Problems Persist in Justice's ADP Management and Operations [GAO, IMTEC-91-4]. In this report, GAO made reference to three specific recommendations to strengthen the management of information resources within the Department. Assistant Attorney General Henry Flickinger's response to this report, dated April 5, 1991, failed to specifically address these recommendations. Please provide in detail how the Department will comply with each of the three recommendations.

16. What would be the impact of the President's Crime bill, if enacted in its present form, on the Federal prison population? What would be the added cost to the prison system budget as a result of this increased population?

Questions for the Department of Justice

General

1. The Attorney General recently informed the Committee of Justice's plans to develop and implement a new Department-wide case management system. Will companies who have commercially available case management systems already in the marketplace (such as INSLAW, Inc.) be allowed to compete on this procurement?

2. What is the rationale for placing the Competition Advocate under the office of the Procurement Executive? Doesn't this place the Competition Advocate in an untenable position of having to criticize or object to procurements already approved or supported by his or her superior (procurement executive)?

3. Under current procedures, the Department allows the delegation of small purchase procurements to the individual U.S. Attorneys offices. The Committee has been informed that the individual U.S. Attorneys offices used this authority to purchase hundreds of personal computers, printers, and software off the General Services Administration Schedule even though the GSA schedule is not the most economical way to purchase large quantities. Why weren't these purchases combined into a single procurement conducted using full and open competition?

4. How many investigations conducted by the Inspector General have resulted in criminal prosecutions, civil suits or administrative actions in fiscal years 1991 and 1992? Please provide the total number for each category and specifically list by name all cases that have been successfully concluded during fiscal years 1991 and 1992.

5. In the Attorney General's annual competition advocacy report to Congress, he reported that the Department would utilize automation to enhance the management review and control of competition and competition savings. How has automation been utilized to improve the acquisition process in the Department?

6. The Competition in Contracting Act requires that the Competition Advocate have qualified resources available to him or her to perform the duties of the office. What full-time resources have been assigned to the Competition Advocate? What is the total budget for that office?

Financial institutions enforcement and investigations

7. The General Accounting Office has reviewed 90 banks subject to the Federal Deposit Insurance Corporation's regulation that failed between 1986 and June 1990. The GAO has asked the FBI which banks have been the subject of FBI investigation and the results of those investigations. The FBI, however, has refused to cooperate with the GAO. Please provide the number of closed bank investigations from this list; the number of pending bank investigations from this list; and details on bank investigations that have resulted in indictments.

8. What is the total of funds actually recovered through the savings and loan prosecutions to date?

9. What are the criteria used by the Department in selecting the savings and loan cases for investigation and prosecution?

10. What are the priorities of the new special counsel for financial institution fraud cases?

11. In December 1989, you announced the formation of 26 financial institution fraud task forces, using the Dallas Bank Fraud Task Force as a model. Dallas Task Force members from Justice, Treasury, financial institution regulatory agencies, and other agencies are co-located and jointly work on cases. As you have noted, the results have been impressive. Could you describe the extent to which the 26 other task forces are organized and function like the Dallas Task Force and their results to date? What improvements to the programs are currently being planned or implemented?

12. In January 1991, the Secret Service also began to investigate financial institution fraud. Could you provide your assessment of how well the FBI and the Department of Justice are working with the Secret Service in this area, and what practices are in place to maximize the two agencies' efforts in this area?

13. As of December 31, 1990, there were 3,702 pending major cases involving financial institution fraud. In what percentage of these cases does the Department expect to seek indictments?

14. What percentage of the 338 failed savings and loan fraud cases pending as of December 31, 1990, involve investigations into activities by senior management of the failed savings and loans?

15. In 1989 and 1990, how many criminal trials involving failed savings and loans have resulted in verdicts of guilty, not guilty or a hung jury? How many cases have been disposed of by guilty pleas and pleas of nolo contendere?

16. How many prosecutors are being assigned to handle the savings and loans industry cases for fiscal year 1992?

17. How many private law firms nationally have been assigned savings and loans cases by the Department? Please provide the amount of funds recovered by each of these firms and the fees paid to them by the Department. Please specify both the total amount of fees paid and the hourly rate charged by the various firms.

18. How many forfeiture actions have been taken to date by the Department in the savings and loans area? How many prosecutors are allocated to these efforts for fiscal year 1992?

Foreign Agents Registration Act

19. [and 20.] What is the Department's policy toward criminal prosecutions of FARA violations? How many criminal prosecutions have been brought under the act since 1980?

OSHA and other workplace safety violations

21. Has the Department considered recommending increased sanctions for OSHA and other workplace safety violations? If so, what are these recommendations?

22. Please provide the number of criminal prosecutions of Occupational Safety and Health Act violations for each of the previous 5 fiscal years, as well as the number of attorneys assigned to OSHA cases for each of those years. For each prosecution, please provide the outcome of the case including the sentence imposed.

23. How many OSHA criminal referrals has the Department received from the Department of Labor during each of the past 5 fiscal years?

24. Please provide the number of referred cases declined as well as a brief description of the reason for each declination.

25. Are there statutes besides OSHA under which criminal prosecutions for workplace safety violations could be brought? Have any such prosecutions been brought? If not, have such prosecutions been contemplated?

Money laundering

26. Does the Department believe that current money laundering statutes are adequate to address cases involving savings and loan fraud and other white-collar crime?

27. What is the Department's role in the negotiation of Mutual Legal Assistance Treaties concerning money laundering?

28. Who in the Department was involved in the recent negotiations with Panama concerning the MLAT and money laundering?

29. Did the Department recommend that implementing legislation in Panama accompany the MLAT agreement? If so, to whom was this recommendation made? If not, does the Department believe that the MLAT requires the production of information that is inconsistent with existing bank secrecy laws in Panama?

Federal contract fraud

30. The Department has supported the exclusion of Federal benefits, including receipt of Federal contracts, from individuals convicted of drug violations. It has also proposed suspending such benefits for convicted individuals who are delinquent in their restitution payments. Would the Department support the same exclusion for contract-related offenses? If not, why not?

31. Does the Department believe that government contractors occupy a position of trust and should therefore be severely punished for contract-related crime?

32. According to the U.S. Sentencing Commission, none of the organizations convicted of Federal contract-related fraud since 1988 have had in place a meaningful program to prevent and detect crime. Would the Department agree that such convicted organizations should, at the very least, receive sentences that include mandatory terms of probation? If so, what terms of probation should be required?

33. During hearings last year, the Department testified that it had nothing more than an advisory role in the suspension and debarment proceedings that accompany criminal contract-related convictions. Does the Department believe that there should be a more defined nexus between the suspension/debarment process and the criminal proceedings?

Sentencing guidelines—organizational sanctions

34. Has the Department actively sought out the views or opinions of Federal judges concerning the proposed sanctions? Please list those Federal judges with whom the Department has consulted.

35. Has the Department prepared a statutory analysis of the Commission's authority to issue binding organizational sanctions? Please provide any opinions or analyses regarding this authority.

Office of Justice Programs

36. The Department's Inspector General recently found that BJA discretionary funds have been improperly transferred to other OJP bureaus. Does the Attorney General agree?

37. Please provide any legal analyses or opinions concerning the final grant making authority of the OJP bureau directors and the authority of the Assistant Attorney General for OJP to modify or cancel bureau grants.

U.S. attorneys

38. Recently the Subcommittee on Intellectual Property and Judicial Administration held a reauthorization hearing on the U.S. Attorneys' Offices. At that time, the General Accounting office testified as to ways that the Department of Justice could improve their allocation of resources in the U.S. Attorneys' offices. Will you incorporate the ideas of the General Accounting Office into your resource allocation process? Please explain.

Witness security

39. There appears to be a gap in the witness security program vis-a-vis foreign nationals and their families. This could involve, for example, a foreign contact (or members of his or her family) who was instrumental in a major international drug case. Do you need

additional statutory provisions such as provisions allowing the Attorney General to designate these personnel as permanent residents?

RICO

40. The Judiciary Committee is in the process of considering the application of the Racketeer Influenced and Corrupt Organizations Act. Do you believe there is a need for reform, particularly in the civil area?

Bureau of Justice Assistance

41. When is the President going to submit a nomination to fill the vacancy of the Director of the Bureau of Justice Assistance? Why has it taken so long to fill this position?

Information resource management

42. In November 1990, the GAO reported that under present conditions it is unlikely the Attorney General or senior IRM official can effectively and efficiently manage information resources at Justice. Over the last 11 years, GAO made a series of recommendations designed to improve Department ADP management and operations.

(a) What is the status of Department improvements to its ADP management and actions to implement GAO's recommendations, specifically the development of an ADP management plan and uniform case management system?

(b) What is the status of Justice efforts to assess the impact of recent computer security breaches, specifically the development of damage assessments from compromised sensitive data?

INSLAW

43. What is the total direct and indirect cost incurred by the Department of Justice, to date, in its litigation with INSLAW? How many and what type of Department employees have been involved in the litigation proceedings since these proceedings began? Please provide the current status of each proceeding including any outstanding motions filed (by either party).

Radiation Exposure Compensation Act

44. The Radiation Exposure Compensation Act calls for the Justice Department to issue its regulations, guidelines and procedures to implement the act within 180 days of the date of enactment. The act was enacted on October 15, 1990, which means that the Department was required to act by April 13, 1991. Where do we stand in that process?

45. The Justice Department requested 17 additional positions (11 attorneys) to develop and implement the regulations pursuant to the Radiation Exposure Compensation Act, at a cost of almost $2 million. Considering that the regulations were scheduled to be issued this month, are these additional positions for fiscal year 1992 being requested to begin processing claims?

46. If not, how does the Department justify the request for so many additional employees?

47. Has the Department made, or does it plan to make, any effort to publicize the existence of this compensation program to potential claimants?

Customs exception to Federal Tort Claims Act

48. Do you know of any cases in which the Government has paid a claim for damages caused by the U.S. Customs Service?

49. In your opinion, does the "Customs exception" under the Federal Tort Claims Act apply to any damage caused by the Customs Service?

50. Do you think this exception should apply to damages caused by negligence of a Customs agent while a vessel is being detained?

Other issues

51. How many prosecutions have been brought for each of the presently existing statutes for which the President's crime bill would authorize the death penalty in each of the last 10 fiscal years? What was the actual disposition of each case? Please identify the name and relevant case number or citation of each case.

52. How many investigations have been undertaken by the multijurisdictional task force program entities? How many have resulted in criminal indictments or informations? Of these, how many were settled/pled prior to trial? How many resulted in convictions? How many resulted in acquittals at trial?

53. The administration has recommended additional mandatory minimum sentences in its recently submitted crime bill. Has the Department solicited the views of the Federal judiciary on the impact which mandatory minimums are having on their sentencing decisions? Please provide the Committee with copies of any communications (solicited or unsolicited) which the Department has received from Federal judges over the last year on this issue.

54. How many criminal referrals has the Department received from the Department of Commerce for violation of the Anti-Boycott Act during the past 10 fiscal years? How many of these were declined and for what reasons?

55. Does the Department support the National Institute of Justice's adoption of the .03 performance standard for personal protective body armor? If so, does the Department support mandatory Federal performance standards in the absence of voluntary compliance by the manufacturers?

56. Does the Department support drug testing of students attending institutions of higher education that receive Federal funds?

57. How many Federal criminal prosecutions have been brought as a result of investigations conducted in whole or in part by the Offices of the Inspectors General in the past 5 fiscal years? Does the Department support full police powers for these criminal investigators?

58. How many cases have been prosecuted and indicted under the Computer Crime Act? Does this statute need to be strengthened or improved?

59. How many adoptive forfeiture proceedings have been brought by the Department in the past 5 fiscal years in which State and local governments utilize Federal forfeiture procedures to forfeit assets seized in State investigations and prosecutions? How much money was forfeited in each of these proceedings and how much of it was turned over to the States and localities? Please provide an individualized breakdown of the moneys transferred to each State

or local government agency and how much time the forfeiture procedure took.

Drug treatment and the Bureau of Prisons

60. How will the Department fund the additional cost of expansion to meet the growing need for drug treatment in the BOP population and comply with the articulated expansion plan?

61. Please provide the number of referrals to the Department of Justice from EPA for environmental prosecutions from fiscal year 1988 to the present. of those referrals, how many has the Department declined?

62. BOP has indicated that it will be able to provide treatment to 4,800 offenders annually by fiscal year 1995. Are there any completed/documented studies of the completion rate of inmates participating in the BOP drug treatment programs? If yes, please provide each study.

63. Have there been any independent evaluations or studies of the effectiveness of BOP drug treatment programs commissioned by the Justice Department? What determinations has the Department made regarding the impact of BOP drug treatment on recidivism rates?

64. Please provide any studies by the Department or undertaken on behalf of the Department that address the effectiveness of drug treatment on the prison population. If no such studies exist, please provide whatever outside studies the Department has utilized for its programs.

65. According to the letter, dated March 20, 1991, from BOP Director Quinlan, the current BOP strategy provides a sufficient number of residential treatment slots in BOP facilities to treat the projected number of offenders who will need treatment through fiscal year 1995. How many staff positions will be required to operate these facilities?

66. Has BOP explored the possibility of contracting out for these services to existing treatment professionals? What would be the difference in cost between a BOP staffed and operated residential treatment program and the cost of contracting out for such services?

67. Please provide the number of residential treatment slots the Department will have available in fiscal year 1993 and fiscal year 1994.

Environmental crimes

68. Please provide the number of criminal prosecutions of the Anti-Boycott Act for each of the past 10 fiscal years. What section of the Department has responsibility for the enforcement of this act and how many attorneys are so assigned? For each prosecution, please provide the disposition of the case.

69. Please provide copies of any memoranda of understanding or any similar agreements between components of the Department and any other agencies, including the EPA, regarding investigations of environmental crimes.

70. Please provide the number of attorneys in the Department devoted exclusively to the prosecution of environmental crimes during each of the previous 5 fiscal years.

71. Please provide the number of agents in the FBI devoted exclusively to the investigation of environmental crimes during each of the previous 5 fiscal years.

72. Please provide the number of prosecutions, by statute, of environmental crimes for fiscal years 1985 through the present. For each prosecution, please provide the outcome, including the number of convictions and the sentences imposed.

73. Please provide the number of environmental criminal cases opened during each of the last 3 fiscal years, regardless of their outcome, as well as the anticipated number of cases which will be opened during each of the next 2 fiscal years.

74. Please provide the number of environmental criminal cases handled by the FBI during each of the last 3 fiscal years, regardless of outcome, as well as the anticipated number of cases the Bureau will handle during each of the next 2 fiscal years.

Drug Enforcement Administration and controlled substances

75. How many civil actions have been brought under section 6486 of the Anti-Drug Abuse Act of 1988 authorizing up to a $10,000 fine for possession of a personal use amount of a controlled substance, and what were the dispositions of those cases?

76. How many full-time DEA agents have been devoted to the Foreign Cooperative Investigations Program for the previous 5 fiscal years? How many are allocated to the program for fiscal year 1992?

77. What has been the budget allocation for the Foreign Cooperative Investigations Program for the last 5 years?

78. In which countries has the Foreign Cooperative Investigations Program been operating in each of the past 5 years? In which countries will the program be operating for fiscal year 1992?

79. What are the evaluative criteria employed by the DEA in selecting those countries to be included in the Foreign Cooperative Investigations Program?

80. What are the factors used in deciding which countries will be the subject of intelligence research?

81. How many "ice" laboratories have been seized since January 1989? Please provide the date, location, and street value for each seizure.

82. Has there been a change over the last year in the volume and pattern of cocaine trafficking and usage? Please provide statistical information about the trafficking patterns and usage trends for heroin and cocaine over the last 2 years.

83. How many agents worldwide does DEA have devoted to Southeast Asian narcotics smuggling? Of these agents, how many are qualified at the highest levels of language skills for the region?

84. How many DEA agents stationed in Thailand are fluent in Thai? Please provide the language scores for each agent stationed there.

85. Please provide a detailed description of the Foreign Language Bonus Program. This should include the total number of agents tested for each language and dialect, the scores for each, and an explanation of the scoring system.

86. The DEA was devoting substantial personnel to closing down "ice" laboratories. Are there new patterns developing in terms of

the location of "ice" laboratories? Is there an increase or decrease in the prevalence of "ice?" If the DEA has seen a decrease or plateau in "ice" usage, what programmatic adjustments have been made in terms of resource allocation?

87. Does the Department support federally mandated multiple prescription programs? Are there any studies to indicate whether such program would impact upon diversion of illegal prescription drugs into the licit market and how much such a program would cost?

88. How many Colombian nationals are under indictment in the United States and how many outstanding extradition requests are presently pending?

89. What resources have been committed to enforcement of the Anabolic Steroids Control Act? What steps have been taken to transfer authority for steroid control to the DEA and to coordinate its efforts with those of the other government departments?

90. How did the DEA decide that personnel and financial resources should be devoted to transshipment countries? How were the five countries for fiscal year 1992 (Brazil, Chile, Colombia, Ecuador and Guatemala) selected? Are agents being diverted from other countries and/or programs in order to staff this project?

91. What is the extent of diversion of licit opium into the illicit market in India? In light of the Government of India's inability to decrease diversion of licit opium into the illicit marketplace, does the DEA support modification or abolition of the 80-20 rule which governs licit opium imports into the United States?

92. Does the DEA have any narcotics intelligence capabilities in Myanmar (Burma), and does the Department support some form of normalization of relations with that country to foster narcotics enforcement?

Dismantling large-scale drug trafficking organizations

93. One of DEA's primary responsibilities is the investigation of major narcotic violators who operate at interstate and international levels. Under the national drug control strategy, the dismantling of large-scale drug trafficking organizations is targeted as one of four overall goals. The strategy also concludes that task forces—with Federal, State, and local participation—provide the best means to go after drug trafficking organizations. There are many task forces nationwide; however, little is known about how these task forces interrelate with other Federal and State investigative resources and how well we are progressing in dismantling drug trafficking organizations.

(a) What is DEA doing to coordinate the interests of these task forces to ensure that we are systematically going after the largest drug trafficking organizations?

(b) If you believe that the United States is systematically attacking large drug trafficking organizations, where do we stand in each of the following areas:

(1) Identifying the trafficking organizations, e.g., how many are there now versus 1 and 2 years ago?

(2) Putting trafficking organizations out of business, e.g., how many trafficking organizations have had key operatives arrested, prosecuted and convicted in each of the last

3 years and how many trafficking organizations ceased operations?

(c) Has the DEA complained to DOJ about "turf battles" with Federal, State, or local agencies? Please detail.

94. The authority to seize and cause forfeiture of property, profits, and other assets of criminals is a powerful law enforcement weapon which Congress has continuously supported through legislation. According to the February 1991 "National Drug Control Strategy," the Federal Government in fiscal year 1991 transferred $240 million in assets to State and local law enforcement agencies.

(a) How much did DEA seize in fiscal year 1991 and to what purposes does DEA use seized and forfeited assets? Are there plans to further expand this program?

(b) Do State and local agencies use forfeited assets received from the Federal Government for law enforcement purposes only? Can transferred assets including proceeds from the sale of forfeited property be used for other purposes such as drug education and drug treatment?

(c) Does DEA's international operations include cooperating with foreign police and prosecutors to obtain seizure and forfeit of assets deposited in foreign countries by international drug traffickers? Is there an international component to DEA's asset seizure and forfeiture program?

95. The Subcommittee on Intellectual. Property and Judicial Administration also heard testimony from the GAO that recommended consolidation of all DOJ and U.S. Customs noncash seized asset management and disposition programs within the U.S. Marshals Service. Do you agree with this proposal?

Firearms policy

96. Please provide the names and titles of the persons with whom the Department consulted in developing the agenda for the March 1991 "crime summit." Were groups and/or individuals outside of the Department solicited for ideas for the agenda? If so, please provide the names of those persons and organizations.

97. Has the Department evaluated the effectiveness of the State laws which require a waiting period before a handgun can be purchased? If such a review has been conducted, please provide the committee a copy of any reports or memoranda on this evaluation.

98. How many persons with prior gun convictions were prosecuted during fiscal year 1990 for Federal felony gun violations? How many persons were prosecuted specifically under 18 U.S.C. 924(e)(1), the "Armed Career Criminal" statute?

99. Of the total fiscal year 1990 felony gun prosecutions, what percentage were handled through plea bargains and to what charges did the defendants plead guilty?

100. In how many Federal criminal cases did judicial suppression of a firearm prevent the prosecution from going forward with the case in each of the past 10 fiscal years? In how many cases were indictments not sought in firearms cases because of potential suppression problems?

101. Please provide any legal opinions or analyses concerning the admissibility of guns as an exception under the exclusionary rule.

102. Why is the administration creating "Project Triggerlock" at this time when there was no mention of gun initiatives at the March 1991 crime summit? Why is this project needed when there is already an "Armed Career Criminal" statute? When is the project slated to begin and will this be started nationally or initially in selected areas of the country?

103. Did anyone, in or outside the Department, recommend that gun control and/or gun legislation be a separate topic discussed at the "crime summit?" If such a suggestion was made, who made it? If the recommendation was made in writing, please provide the Committee with a copy.

Courts

104. Would you specifically address the subject of nonacquiescence in the final report of the Federal Court Study Committee?

105. With the scheduled elimination of the Parole Commission in the relatively near future, are you confident that Federal judges will be able to administer supervised release?

Prisons and detention

106. The Federal prisons are currently operating at close to 160 percent of capacity, with a population over 61,000. What do you project the population and percentage of capacity to be in 1995 and the year 2000?

107. What would be the impact of the President's crime bill, if enacted in its present form, on the Federal prison population? What would be the added cost to the prison system budget as a result of this increased population?

108. Aside from proposing an increase in the budget to fund new prison construction, does the administration have any proposals to address the problem of Federal prison overcrowding and the escalating costs of incarcerating the rapidly growing prison population?

109. How are responsibilities for detention of presentence individuals divided between the Federal Bureau of Prisons and the U.S. Marshals?

110. The Federal prisons have a tradition of leadership and professionalism. Many States follow the example of the Federal prisons. Does the administration currently have any innovative proposals or new ideas to improve the management, safety or quality of the Federal Prison System?

111. Close to 50 percent of individuals entering the Federal Prison System have a history of drug abuse. Do you believe that it is useful to provide treatment for offenders with substance abuse problems? How soon can the Bureau of Prisons realistically make that treatment available on a needs basis?

112. Last year, the Congress passed as part of the Crime Control Act of 1990, the Correctional Options Incentives Amendments Act (Title XVIII of P.L. 101-647). This program would assist State and local governments in developing and testing correctional options around the country. Do you intend to seek funding for this program in fiscal year 1992? How much money will you request?

BOP medical care

113. A recent CBS "60 Minutes" segment was very critical of the medical care provided to Federal inmates by BOP. Among the defi-

ciencies reported were crowded facilities, staff shortages, and incompetent doctors. In 1989, the Dallas Morning News ran a six-part series on the poor quality of prison medical care that was also very critical of BOP. The newspaper articles cited many of the same problems mentioned on "60 Minutes," and noted that the poor quality of medicine "imperils" Federal inmates. Interestingly, the Veterans' Administration recently admitted to the poor quality of medical care in its hospitals after years of similar allegations.

(a) Has the Department ever confirmed or acknowledged that it has provided inadequate medical care to inmates? Would the Department support the creation of a Medical Review Board to review cases where inadequate health care has been alleged?

(b) What is BOP doing to assure an acceptable quality of medical care for inmates?

Agency management

114. In response to congressional and other concerns with Department of Justice management of the debt collection program, the Department, in its fiscal year 1992 budget request, committed to issuing a comprehensive plan for debt management by May 1, 1991.

(a) What is the status of the plan? Will it be issued by May 1?

(b) What are the major components of the plan, i.e., what new initiatives does it contain that will improve Justice management of this high risk area?

115. The 1992 budget request identified eight high risk areas in the Department. Several of these areas, including asset seizures, have been highlighted in the Department's Financial Integrity Act reports for a number of years. For three of these areas—debt management, INS management, and Marshals Service financial management—OMB has expressed reservations about the adequacy of Department efforts to resolve the problems.

(a) What actions have been taken or are underway to improve Justice management of the high risk areas? To more proactively manage high risk areas in the future?

(b) What progress has been made in improving the management of these areas? How have Federal financial and other risks been reduced or eliminated?

BOP Prison System Expansion Program

116. The Federal prison system is experiencing unprecedented increases in its inmate population. The war on drugs and a general "get tough" attitude toward crime have caused the inmate population to double since 1980, and current projections indicate it will double again by the year 2000. To address this situation, the Bureau of Prisons (BOP) has embarked on the most extensive and costly facility expansion program in its history. In fiscal years 1989 through 1991, BOP received a total of $2.4 billion for its facility expansion program. Costs could reach almost $3 billion by fiscal year 1995 and substantially more if increased expansion is approved to accommodate population increases projected for beyond 1995.

(a) The Commission on Alternative Utilization of Military Facilities was established as a focal point for identifying military properties for possible conversion to prisons and drug treatment facilities. Such conversion is a considerably less costly way to add prison capacity than new prison construction. In its report, "Prison Expansion: Program to Identify Property for Prison Use Could be Improved," (GGD-90-110, September 30, 1990), GAO found that the Commission had not succeeded in identifying any DOD property that will be converted to prison use. This lack of success resulted from two factors: the Commission did not review all properties that might have been suitable, and procedural weaknesses affected its review process. Given that DOD is stepping up its efforts to close unneeded bases, what is BOP doing to assure that all appropriate properties are being carefully identified and considered for conversion to prison use?

(b) To accommodate the increasing inmate population and the needs of the facility expansion program, BOP plans to double its workforce by fiscal year-end 1995. BOP has traditionally had difficulty recruiting qualified applicants for positions such as correctional officers, nurses, physician assistants, social scientists, accountants, educators, warehouse staff, maintenance mechanics, and other trades persons. Lack of competitive pay rates, the age 35 maximum entry age limit, lack of qualified applicants, and the poor image of correctional work are cited as reasons why it is difficult to hire people to fill specialty type positions. What has BOP done to target recruitment for the difficult-to-fill positions? If BOP is unable to attract people for critical positions, how will this affect BOP's ability to activate and operate all the prisons it plans to build? What contingency plans exist for a scenario where the labor pool is such that there are not enough qualified applicants to fill positions?

Authorization Questions for DEA

Measures of effectiveness of Federal drug programs

117. It is a longstanding problem that there is no exact data on the quantity of illicit drugs being produced or cultivated; only estimates of what is being produced or cultivated are available. This, by itself, leaves open to question how effective the various drug programs operated by the Federal Government are.

(a) How much reliance can be placed on these estimates of production and cultivation? Have the techniques used to develop these estimates been subjected to independent verification? what improvements have been incorporated to make the estimates more reliable?

(b) Does DEA use these estimates to determine the effectiveness of its drug programs? How does DEA use these estimates to determine the effectiveness of its efforts? If DEA does not use these estimates, what does it use? If DEA uses prior year's results, what is the basis for reliance on these results?

(c) How does DEA measure the success of its overall operations over the short term and long term (3–5 years)?

Marijuana eradication

118. The United States is a major marijuana producer. DEA is an active participant with other Federal, State, and local law enforcement agencies in the eradication of marijuana. According to the February 1991 "National Drug Control Strategy," the administration is seeking $15 million in fiscal year 1992 to continue eradication programs. On page 29 of the strategy it also states that in 1990 the DEA Domestic Cannabis Eradication/Suppression Program resulted in the eradication of 7.3 million cultivated plants, 5,729 arrests, and nearly $38 million in seized assets. The eradication of 7.3 million plants represented a 30-percent increase over the number of plants eradicated in 1989. It appears that program effectiveness in this instance is measured against prior years' results. This would be a good basis for measuring the effectiveness of this program if you could be assured that the number of marijuana plants cultivated in 1990 did not increase over the number cultivated in 1989.

(a) How successful has DEA's program been? What are the estimates of cannabis production in this country? Has cannabis production in the United States increased?

(b) Is the United States a source country exporting marijuana? If so, to what countries is the drug being exported?

(c) Are there any alternative policies that should be considered given that eradication of illegal drug producing plants in foreign countries has not been effective?

(d) How does DEA account for possible increases in production quantities in measuring the effectiveness of this program? With other programs?

(e) What is DEA's involvement in the eradication of marijuana and other crops used in the production of illicit drugs in foreign countries? Are any statistics available on the results of these programs? Please provide them for the record.

Intelligence centers

119. There are many intelligence centers currently in operation that provide various type of illegal drug activity intelligence. DEA operates the El Paso Intelligence Center (EPIC) in concert with nine other Federal agencies. EPIC also provides support to other Federal, State, and local law enforcement agencies. DOD was recently tasked with integrating into an effective communications network the command, control, communications, and technical intelligence assets of the United States that are dedicated to the interdiction of illegal drugs into the United States.

(a) What has DOD done to integrate EPIC into the communications network it was tasked to establish?

(b) What impact, if any, has this had on EPIC's ability to provide intelligence information to Federal, State, and local law enforcement agencies?

120. The fiscal year 1992 "National Drug Control Strategy" (page 118) contained statements that the Attorney General "will create and chair a Law Enforcement Drug Intelligence Council to coordi-

nate the development and prioritization of drug intelligence collection and analysis requirements for the Federal law enforcement agencies."

(a) Has this Council been established? Is DEA a participant? Who are the other members of the Council?

(b) What input, if any, has DEA provided or been asked to provide to the Council?

(c) How does DEA view the council's role in bringing together the various intelligence centers now in operation?

Diversion of chemicals used in manufacturing illegal drugs

121. In 1985, Congress passed the Chemical Diversion and Trafficking Act (CDTA), which gives DEA the authority to regulate chemicals used in manufacturing illegal drugs such as cocaine. The CDTA does not require chemical handlers—manufacturers, distributors, exporters and importers—to register with the Federal Government. DEA is left to identify chemical handlers. The CDTA also requires chemical handlers to retain "retrievable" records of domestic transactions for inspection by DEA.

(a) Has the CDTA been effective in reducing the flow of chemicals essential to cocaine production?

(b) What has been DEA's experience in administering the CDTA? Is there a need for any legislative changes?

(c) What has been DEA's experience in identifying chemical handlers? Is there a need to require chemical handlers to register with DEA?

(d) Does DEA cooperate with the U.S. Customs Service in administering the CDTA?

DICK THORNBURGH, ATTORNEY GENERAL OF THE UNITED STATES, U.S. DEPARTMENT OF JUSTICE, LETTER WITH ACCOMPANYING ATTACHMENTS TO CHAIRMAN JACK BROOKS, DATED JUNE 17, 1991

Office of the Attorney General
Washington, D. C. 20530

June 17, 1991

The Honorable Jack Brooks
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

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JUDICIARY COMMITTEE

Dear Mr. Chairman:

Enclosed are responses to the sixteen questions directed to me by your Committee in preparation for the Department of Justice FY 1992 appropriations authorization hearings. Responses to the general set of one hundred twenty-one questions are also included in this transmission.

I trust this information will be useful to the Committee. Please do not hesitate to contact me if I can provide further information.

Sincerely,

Dick Thornburgh
Attorney General

Enclosures

cc: The Honorable Hamilton Fish
Ranking Minority Member

I. QUESTIONS FOR ATTORNEY GENERAL THORNBURGH

QUESTION 1: During the March 21, 1991, hearing before the Government Information, Justice and Agriculture Subcommittee of the Committee on Government Operations, the General Accounting Office concluded in its testimony that "one simply cannot trust that sensitive data will be safely secured at the Department of Justice."

How does the Department respond to this assessment?

What action has the Department taken to resolve this problem?

When will the Department be in full compliance with the Computer Security Act of 1987?

ANSWER: We recognize that the General Accounting Office has identified problems that could, potentially, permit the breach of sensitive data resident in the computers or automated storage media in some of the Department's various component organizations. We believe that this material has been secure to date, and have no evidence that any case or investigation has been compromised by a loss of information.

We are and have been for some time, strengthening our ADP security programs. These include the following:

- In December and January of this past year, the Department's Security Staff reviewed over 100 field locations, principally Offices of United States Attorneys, and briefed personnel to heighten sensitivity to security issues. This program of field briefings will continue.

- In addition, we are performing a series of security procedure compliance reviews, including specific ADP systems which have been identified as sensitive under the Computer Security Act.

- Further, we are updating security plans for the 83 systems identified as sensitive under the Computer Security Act. This process has been underway for several months and should be completed shortly.

- In April of this year, a directive was sent to all Department components requiring them to conduct an immediate assessment of their security programs in order to improve security awareness. This process is ongoing at this time.

- Finally, in mid-May, the Assistant Attorney General for Administration directed that all Department components

take the following actions with regard to security awareness and training:

-- submit, by early June, a plan to ensure that all current employees have received computer security sensitivity awareness training, and

-- implement a procedure to ensure that all new employees receive computer security sensitivity training during their initial employee orientation as they enter service in the Department.

QUESTION 2: In August 1990, Special Counsel James G. Richmond reportedly stated that about 90% of the 100 priority failed savings and loans should result in criminal prosecutions. To date, which of those savings and loan cases have resulted in indictments? Do you expect to file in 90% of the cases? What is the projected time frame for the filing of these cases?

ANSWER: After discussing the premise of the first part of this question with former Special Counsel James G. Richmond, we believe there may be a misunderstanding over the 90% figure. We have not predicted a percentage of prosecutions we expect to result from the so-called Top 100. Rather, we have reported conviction rates exceeding 90% in our S&L prosecutions.

With regards to the 100 priority referrals received from the financial institution regulatory agencies last July, one or more charges have been brought in 51 of those matters (list enclosed as Appendix I). It is important to recognize that a referral does not necessarily mean that there can be a viable criminal prosecution. Moreover, the priority assigned to a particular referral last July may no longer be the same priority a regulatory agency would assign to the matter today. Thus, while we continue to focus on all of the so-called Top 100 cases, we have asked the regulators to work with us through the National Bank Fraud Working Group and on a local and regional level to help us identify ongoing priorities. To the best of my knowledge, this approach has been welcomed and effective.

Because of the complexity of the cases and variances in availability of regulatory expert resources in aiding the criminal investigation of the referral, a schedule for indictment cannot be precisely predicted. However, I set the timetable for prosecution last year when I told Congress that we will be aggressively pursuing these matters for at least five more years.

At the present time, we have not been able to develop a meaningful correlation between the number of referrals received and number of viable criminal prosecutions resulting therefrom. Thus, we are unable to provide an accurate estimate of the percentage of those priority referrals which will result in prosecutable cases.

QUESTION 3: It has come to this Committee's attention that the Department of Justice has not provided the GAO with certain information which is critical to effective oversight of your efforts to address financial institution fraud. Much, if not most, of the work in this area is being conducted at the request of congressional committees. Department officials have contended to GAO representatives that GAO's access to records is basically no different than that of the "general public." Do you agree with this statement, and please explain the basis for your answer.

ANSWER: It is impossible to respond to this question without specifics. I would note however, that the Acting Special Counsel, representatives of the Fraud Section and Executive Office for U.S. Attorneys, and 27 field office supervisors and their respective agencies and working group members have either met or are scheduled to meet with teams from GAO in an effort to provide as much insight and material as we may legally provide. I am somewhat dismayed at the suggestion that we are somehow attempting to subvert oversight in an area where we have provided unprecedented insight into our prosecutive mechanisms. In complying with the reporting requirements of the Crime Control Act, we regularly provide Congress with substantial amounts of information about our efforts in FIRREA and CCA matters which would aid it in its oversight function. Copies of these reports have been regularly provided to GAO as a courtesy.

The Department's policy is to give GAO access to all documents to which it is legally entitled, and we recognize that this is a broader right to access than that available to the general public. The Department rectifies such problems when they are brought to the attention of the appropriate persons, and I encourage you or GAO to bring to the attention of our liaison for GAO audit activities and the Assistant Attorney General for Legislative Affairs any cases where you believe that GAO has inappropriately been denied access to information.

While we intend to cooperate with GAO, we would like to ask for GAO's cooperation as well. At times, GAO's requests for information are duplicative or vague. We have had instances in which we have responded to one member of a study team only to get a second request for the same information from another member of the same team. We have also had occasion to expend significant staff time compiling information only to be told that it is not what GAO wanted. These situations can overshadow cooperative efforts. However, when GAO's requests are clearly formulated, as they often are, we believe the Department provides timely and responsive information with little wasted time and effort.

QUESTION 4: Generally, the Department and its component agencies have become more aggressive in denying the General Accounting Office access to a broad range of Department records and personnel. It has also questioned GAO's right to conduct a review of the extent of narcotics trafficking and money laundering in Panama,

asserting that GAO has no authority to review activities that are not "statutorily created."

Does the Justice Department plan to continue its insistence on extremely narrow and questionable interpretations of the authorityof the GAO to perform its work and in so doing to serve the Congress?

ANSWER: The Department's policy is to cooperate with GAO investigations and studies that are within GAO's statutory authority. GAO's authority is limited to financial audits (31 U.S.C. § 712) and "evaluat[ions] of . . . "program[s] or activit[ies] the Government carries out under existing law" (31 U.S.C. § 717(a)). We recently expressed to GAO our concerns over the scope of its proposed study on "Money Laundering and Narcotics Trafficking in Panama." We stated that we would "be pleased to participate in the GAO study, but only to the extent it focuses on U.S. Government activities." Although money laundering and narcotics trafficking in Panama obviously are not United States Government's activities, we have made it clear to GAO that the United States Government assistance to the government of Panama with respect to those problems <u>are</u> activities that GAO is authorized to review under its statute.

There is one United States Government activity that GAO inquired about as part of its Panama study that we believe is beyond GAO's authority. We informed GAO that its study could not properly focus on the United States Government activity of negotiating a Mutual Legal Assistance Treaty, because that is not a statutory activity, but rather an exercise of the President's constitutional authority to conduct international negotiations. This Department has long taken the position that under 31 U.S.C. § 717(a), GAO may review only statutory and not constitutional activities. <u>See</u>, <u>e.g.</u>, Memorandum for the Counsel to the President, from John M. Harmon, Assistant Attorney General, Office of Legal Counsel, 2 Op. O.L.C. 415, 420 (1978).

QUESTION 5: Recently, the CIA has refused to cooperate with investigations and studies conducted by GAO at the request of the Judiciary Committee. The CIA has asserted that legally it is only accountable to the House and Senate Intelligence Committees.

An official of the CIA recently wrote GAO and stated that CIA information "is discussed exclusively with the Intelligence Committees of the House and Senate in keeping with the determination of the Congress to vest by statute responsibility for intelligence oversight in these two committee(s)."

Has the Department issued any legal opinions or provided the CIA with advice concerning this issue? If so, please provide the Committee with these opinions and all related documentation on the matter.

Do you personally support the CIA's position, and is it legally justified?

If so, please provide the Committee all legal opinions and documentation in support of your position.

ANSWER: There are no published or publicly available Department legal opinions or analyses on these issues and, under the Executive Branch policy on the confidentiality of Department of Justice legal advice, we cannot disclose whether any component of the Department has provided legal advice to the CIA or any other client concerning the issue. The Department agrees with the CIA that GAO is specifically precluded from access to intelligence information by the Intelligence Oversight Act, Pub. L. No. 96-450, § 407, 94 Stat. 1975, 1981 (1980), found at 50 U.S.C. § 413. As its legislative history makes clear, the Intelligence Oversight Act establishes a comprehensive scheme for congressional oversight of intelligence activities that constitutes the exclusive means of congressional oversight.

QUESTION 6: Has the Department received communications (either formal or informal) from individuals outside of the Department concerning the U.S. Sentencing Commission's proposed organizational sanctions? If so, please list those persons in the Judicial branch, in other agencies of the Executive branch including the Executive Office of the President, and the private sector from whom the Department has received such communications.

ANSWER: The Department of Justice does not maintain logs or records of all incoming communications, and a number of persons who were employed by the Department during the Sentencing Commission's consideration of proposed sentencing guidelines for organizational offenders have since left government service. We recently responded, however, to a similar inquiry from Senator Carl Levin concerning the Department's role in the development of organizational sentencing guidelines. A copy of that response (with attachments) is enclosed in Appendix I.

In addition to the contacts identified in the Levin letter, we are aware that since March 16, 1990, Deputy Assistant Attorney General Paul Maloney met with representatives of the National Association of Manufacturers and other business groups.

QUESTION 7: Of the individuals and organizations prosecuted for environmental crimes since 1985, please identify those defendants who had been previously convicted of a criminal environmental offense.

ANSWER: Unites States v. James L. Holland, Cr. 83-0891, S.D.Fla. (A probation revocation)

On May 27, 1988, Holland was sentenced on probation revocation to six months of imprisonment, a $10,000 fine and banned from the construction business in the Florida Keys until 1990. The Corps

of Engineers caught him bulldozing 3 1/2 acres of mangrove swamp at Coco Plum Beach without a permit and performing improper bulkheading and dock construction at Key Colony Beach and Long Key (all located in Mangrove County) without proper permits and in violation of permit requirements.

On February 21, 1984, Holland entered into an agreement which included a guilty plea to 11 misdemeanor violations (8 under the Clean Water Act, 3 under the Rivers and Harbors Act). Holland, the owner of Middle Keys Construction Company, constructed bulkheads and piers at twelve sites in the lower and middle Florida Keys between May 1980 and August 1983 without obtaining the required permits from the United States Army Corps of Engineers. The original sentence was suspended.

United States v. Sam Jenkins, Jr. and Sea Port Bark Supply, Cr. 88-56-TB, W.D. Wash.

On January 27, 1989, Jenkins and his company were each sentenced to a $1,000 fine resulting from guilty pleas entered on December 16, 1988, to the negligent discharge of pollutants (arsenic, lead and zinc) from Sea Port's mulch manufacturing process into Commencement Bay. This is the first prosecution in which an individual was charged as a repeat offender for an environmental crime.

On August 29, 1986, following similar guilty pleas, Sea Port was sentenced to a $2,500 fine, with $1,500 suspended. Jenkins was sentenced to a $2,500 fine, with $2,250 suspended. One year of probation was imposed upon both defendants.

QUESTION 8: At its Quantico facility, the FBI offers the National Academy training program for state and local police. In the coming years, the FBI will have to increase its own use of the training academy to accommodate FBI new agent classes of 900 trainees or more. Will the FBI continue to make available to State and local police the very valuable National Academy Program at current levels?

ANSWER: In the coming years, the FBI will increase its own use of the Training Academy to accommodate training for FBI New Agent classes of 900 trainees or more per year. Space limitations, staffing needs, and changing training needs require FBI managers to constantly review and adjust the Academy's training priorities. In addition to training the FBI work force, the Academy has accommodated basic DEA training since FY 1986. While committed to the National Academy, which was created by Congress under the Omnibus Crime Control Act of 1968, the FBI is very reluctant to consider eliminating any National Academy sessions. The FBI trains approximately 1,000 state, local, and other police officers during the four National Academy sessions every year. This option is now being considered because of our own pressing training needs. The Department must give priority to the training of new FBI Agents and to in-service and management training for our own on-board work

force. This is a period of transition because we project a major shift in the Agent work force in the coming years. Between FY 1991-1995, the FBI will be training up to 4,300 New Agents and it is estimated that, during that time frame, approximately 35% of our Agent work force will have less than five years' experience.

QUESTION 9: There have been press reports regarding judicial findings of prosecutorial misconduct. In the most recent report by the Office of Professional Responsibility (OPR) at the Department of Justice (covering the year 1988), there was a "notable increase over the previous year in the number of complaints alleging abuse of prosecutorial or investigative authority." Even Federal judges have occasionally identified abuses. Please give us a report on the disposition of all cases in which there are allegations of misconduct by members of the Department, including U.S. Attorneys or their assistants, which were investigated in the past 5 years. You need not identify the individuals involved.

ANSWER: OPR has reviewed its records involving allegations of abuse of prosecutorial or investigative authority and unprofessional or unethical conduct on the part of attorneys in the Department, including U.S. Attorneys and Assistant U.S. Attorneys. The period covered is calendar year 1985 through calendar year 1989, the last year for which statistics are available. During the period, OPR closed 326 matters involving these categories of misconduct. A breakdown of the number of OPR matters closed during each year is set out below:

1985	1986	1987	1988	1989
30	74	84	72	66

The majority of the allegations of abuse of prosecutorial or investigative authority and unprofessional or unethical conduct on the part of Departmental attorneys were not substantiated. Allegations of misconduct were substantiated in a total of 19 matters, or about 6% of the cases closed during the period. In another 17 matters, the subject of the allegations resigned or retired before the completion of the investigation or the imposition of discipline. In some instances, resignation or retirement may have been for reasons unrelated to the allegations.

In cases where allegations of misconduct were substantiated, various forms of disciplinary action were taken. (It should be noted that OPR is responsible for fact-finding to determine whether or not misconduct occurred and is not responsible for imposing discipline. The overall disciplinary authority with respect to Department attorneys is the Deputy Attorney General.) Disciplinary actions taken included reprimands, written and oral admonishments, and in some cases, suspension or removal. The OPR records for the five-year period indicate that there were five matters which resulted in reprimands, four which resulted in written or oral admonishments, one which resulted in a suspension, and two which resulted in termination or removal.

Regarding the increase in the number of matters involving the abuse of prosecutorial or investigative authority noted in OPR's Annual Report for 1988, most of that increase was attributable to allegations of investigatory abuse directed against special agents employed in Departmental components. The figures developed for this response indicate that the number of such allegations against Department attorneys has remained relatively constant over the last four years for which statistics are available (1986-1989).

QUESTION 10: What proposals of the Federal Court Study Committee does the Administration support? Please specifically address the subjects of non-acquiescence and the scheduled elimination of the Parole Commission, both of which are addressed in the final report of the Federal Court Study Committee.

ANSWER: The Department of Justice supported the work of the Federal Court Study Committee (FCSC) during its lifetime. Assistant Attorney General Edward Dennis was a member of the Committee.

Most of the recommendations of the FCSC were directed to the Judicial Branch. As I testified before the Committee on January 31, 1990, and as Assistant Attorney General Stuart Gerson testified before a subcommittee of the House Judiciary Committee in September 6, 1990, a healthy respect for the concept of separation of powers requires that we defer to the Judicial Branch on matters of internal management of the Judicial Branch. For the Committee's convenience, both of our statements are included as Appendix II.

Despite our strenuous objections, as outlined in my testimony before the FCSC, the Committee made a number of recommendations on what criminal cases should be brought in the federal courts and certain other issues of criminal law and procedure, determinate sentencing and mandatory minimum sentences. The Administration continues to strongly oppose these recommendations.

During consideration of a bill to implement some of the recommendations of the FCSC, there were six specific proposals with respect to which the Administration opposed or recommended changes. Notwithstanding the Administration's reservations, Congress enacted a residual statute of limitations that may interfere with enforcement efforts, eliminated the possibility of removing certain claims against federal officials from state to federal court; provided supplemental jurisdiction; extended the Parole Commission without providing for an orderly phase-down; extended the Bankruptcy Administrator program that should be folded into the United States Trustees; and clouded the rules of venue. Pub. L. 101-650, title III.

With respect to the proposed five year extension of the Parole Commission, the Department favors an orderly phase-out. With respect to the subject of non-acquiescence, the Department's position is that the Report mischaracterizes the current policy of

the Social Security Administration (SSA) with respect to acquiescence in holdings of the United States Courts of Appeals. Since 1985, SSA has followed a general policy of acquiescence in circuit court law, and has published over 40 Social Security Acquiescence Rulings specifically following circuit court holdings. As set out in its most recent rules published in the January 11, 1990 Federal Register (55 Fed. Reg. 1012), SSA's current policy is to publish Acquiescence Rulings when a determination is made that a circuit court holding conflicts with SSA policy and the Government has not sought further review of that decision. In its final rules, SSA also reserved the right to relitigate issues in circuits in which Acquiescence Rulings have been published, under very specific circumstances. The Department of Justice supports SSA's current acquiescence policy.

QUESTION 11: The General Accounting Office issued 3 reports on management problems related to the Immigration and Naturalization Service (INS).[1] In addition, a Department study by the Justice Management Division (JMD) also identified management problems within INS. In commenting on one of the GAO reports (GAO/GGD-91-28), the Department said that it had established a panel to review the deficiencies and design a program strategy to resolve them. I understand the study has been completed.

a. Please outline the major conclusions and recommendations.

b. What action has the Department taken to implement the panel's, GAO's, and JMD's recommendations?

c. What, if any, recommendations will you not implement, and why?
d. How long do you estimate it will take to correct the problems identified in these reports?

e. What additional resources, if any, will be needed to implement the recommendations?

f. What, if any legislative changes are needed to help improve the management problems at INS?

g. What steps have you established to ensure these problems are fully addressed and corrected?

ANSWER: The audits and studies referenced in your question were conducted and issued over a period of three years and examined

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[1] Immigration Management: Strong Leadership and Management Reforms Needed to Address Serious Problems (GAO/GGD-91-28, Jan. 23, 1991); Information Management: Immigration and Naturalization Service Lacks Ready Access to Essential Data (GAO/IMTEC-90-75, Sept. 27, 1990); Financial Management: INS Lacks Accountability and Controls Over Its Resources (GAO/AFMD-91-20, Jan. 24, 1991).

virtually every aspect of management at the Immigration and Naturalization Service.

The individual findings and recommendations of each of the audits and studies have each seen specific responses from the Department and/or the Immigration and Naturalization Service. In summary, they portray an agency with serious problems in the following areas:

- lack of management direction and discipline;
- organization and structure;
- morale;
- financial management, with emphasis upon internal controls related to financial management;
- budget formulation and execution;
- development and implementation of ADP support for agency programs and operations; and
- personnel development and utilization.

The task of the Carlson Panel, referenced in question 13, was to examine the Immigration and Naturalization Service at the "macro" level and to develop a management approach and strategy for resolving the major problem areas identified in the audits and studies. The major findings and recommendations of the Panel included the following:

- that, due to its size and diversity of mission, the Immigration Service is an exceptionally complex organization to manage;
- that, due to its recent, well-publicized difficulties and to uncertainty around its structure and reporting relationships, morale in the agency is very low;
- that the organizational structure of the agency must be finalized as soon as possible;
- that reporting relationships and lines of communication must be re-established and/or clarified as soon as possible;
- that major efforts must be made on the management and administrative side of INS to rectify significant problems, especially in the areas of:
  - -- ADP support and development
  - -- funds control
  - -- budget formulation and execution
  - -- accounting systems, and
  - -- procurement activities;
- that the role of the Regional Offices must be redefined and clarified so that those offices function as implementers of agency policy rather than creators of policy on a region-by-region basis;
- that INS requires its own internal audit capacity to enable the Commissioner to examine and resolve issues as they arise within INS;
- that INS requires a single, central focal point for the conduct of all security activities to ensure that

security concerns are given adequate weight in the conduct of agency activities; and

- that INS requires a centrally operated disciplinary review function to ensure proper sensitivity agency wide to issues involving employee misconduct.

The findings and recommendations of the Carlson Panel are being implemented. The new organizational structure is being put into place. This structure is designed to provide the framework for implementation of the recommendations.

The only Carlson Panel recommendation not specifically being implemented as made is the reporting relationship of the Regional Offices in the new structure. While this relationship is not precisely the same as that recommended by the Carlson Panel, its intent -- to limit and restructure the role of these offices -- is the same as recommended by the Panel.

Full implementation of the Carlson Panel recommendations, as well as those of GAO and JMD, will require several years. The Panel itself noted that the changes in the agency will require long-term and dedicated senior managers, and looked to a term of three to five years to accomplish the task. The redesign and implementation of major agency systems, automated and otherwise, will require both significant funds and a substantial amount of time. This does not mean that major changes cannot be felt relatively quickly, as the agency gathers momentum toward the changes that are required; it simply recognizes that change of the magnitude identified in the audits and studies cannot be accomplished quickly.

We do not, at this time, have specific estimates of additional resource or statutory requirements necessary to implement the required changes.

QUESTION 12: In January of this year, the General Accounting Office (GAO) issued a report on INS financial management in which it stated:

> INS' primary accounting system does not provide complete and accurate financial information on the results of its program and administrative operations. For fiscal year 1989, there were differences amounting to $94 million between the balances recorded in the INS primary accounting system and the financial reports submitted to the Department of the Treasury. As a result, INS does not know the total amount of funds it has available. In addition, managers are not receiving the financial management information needed to adequately control funds and evaluate program operations.

INS has long experienced problems in providing effective, quality service in adjudicating applications for alien benefits. This

committee continues to hear complaints about long waiting lines, phone calls that go unanswered, and excessive application processing times. GAO's overall management report noted that funds for adjudication and naturalization have doubled over the past several years, while over the same period the workload has increased only moderately. Nonetheless, in April INS again increased application processing fees. These fees have nearly tripled over the past three years.

(1) If indeed INS cannot adequately control funds and evaluate program effectiveness, on what basis has INS determined that its nearly three-fold increase in application fees is justified?

ANSWER: Funds associated with the Examinations Fee Account are closely tracked by INS. This account is the sole funding source for the INS Adjudications program and provides a significant level of funding for many programs which support Adjudications activities. Recent legislative changes are causing an increase in Adjudications workload. Additional officers and support personnel are being recruited, hired and trained as rapidly as possible. Until the workload stabilizes, however, the true impact of the many new initiatives which Congress has mandated cannot be completely measured and there may be some temporary degradation in the level of services provided.

Because application fees are the sole source of direct program funding and a significant source of support program funding, all increases in processing costs must be passed to the beneficiary of the service. The methods and procedures used to establish the fee levels were consistent with those conducted in prior years. The formula used to determine fees contains several cost elements which, added together, constitute the cost per application. The elements include:

(a) Direct and indirect professional and clerical costs per application;
(b) Actual and projected general expense costs; and
(c) Non-revenue work costs.

Increases in application fees were justified for a number of reasons: First, since fee levels were last set, dramatic increases occurred in data and communications costs, as well as computer hardware and systems developmental costs; second, fees were increased to cover the costs of refugee and asylum processing (fees may not be charged for processing these applications), which were previously funded through an appropriation; third, costs associated with Federal Bureau of Investigation (FBI) name and fingerprint checks, previously absorbed by the FBI, are now covered by the Examinations Fee Account.

Since the INS Adjudications Program is no longer a line item in the budget, INS must recover from application fees <u>all</u> costs involved in the adjudications process, including refugee and asylum applications and FBI checks. Since no other resources exist to

fund adjudications processing, INS changed the fee structure to provide 100 percent funding.

(2) Please supply the Committee a copy of the study upon which INS' April 11, 1991 fee-schedule increases were based.

ANSWER: There was no formal report prepared, however, INS conducted a substantial evaluation for the purpose of determining the fee levels. The INS Fee Schedule was based on three components which determined the fee level for each type of application or petition. First, from an analysis of the professional hours, clerical hours and average grade (varies according to case type and geographic area salary differential), a determination of the direct personnel costs of processing each type of application was made. The direct costs associated with adjudicating a case dictate the fee differences among case types, except for the addition of costs incurred which are external to the INS (primarily FBI name and fingerprint clearances) and card production costs. Rates for 1991 and 1992 will be somewhat higher due to normal salary scale increases.

The second component in each fee computation is indirect costs for case processing, which are significantly higher than direct costs. Included in the indirect costs are both one-time costs and recurring costs. Recurring costs include the following:

- actual data and communications charges assessed by INS Information Systems Division and the Department of Justice;
- office rent;
- telephone and postage charges;
- general information services;
- personnel support services;
- engineering support services;
- general administrative services;
- equipment costs and depreciation allowances;
- systems software maintenance costs;
- mail, file, records and data entry services (including federal and contract employee costs);
- forms and publication printing;
- management costs including headquarters and regional adjudications staffs;
- outreach and appellate personnel;
- training and travel costs; and
- legal expenses, including litigation settlement costs and representation.

Among the one-time costs are included such items as:

- computer hardware for major systems;
- office moves and renovations;
- furniture acquisition;
- special contracts; and
- systems software development.

To preclude extreme, one-year fee increases to cover such major expenditures, we try to spread these costs over several years and use the fee account carryover balance. The recurring and one-time costs total $43.40 per application.

The third component of the fees is the "surcharge" which covers the costs of certain program areas which are not included in an appropriation but, which by congressional direction, must be funded from the Examinations Fee Account. Included in these costs are:

- funding for the overseas and refugee programs;
- the Asylum Corps Program;
- the Adjudications Programs on Guam and the United States Virgin Islands;
- services for diplomatic-status aliens;
- services for fee-waived applications in accordance with 8 CFR 103; and
- approximately two-thirds of the employment document requests.

The current surcharge is $8.74 per application.

(3) What was the application fee for each of the following on January 1, 1988: (1) I-130 (2) I-600, and

(4) N-400? What is the fee for each of these today? How long did it take INS to adjudicate each of the above petitions in January 1988 in Houston, Los Angeles, Miami, and New York? How long does it take in each of those cities today?

ANSWER:

	1-1-88	5-4-89	4-11-91
I-130	$ 35	$ 40	$ 75
I-600	$ 50	$ 75	$ 140(*)
N-400	$ 0*	$ 60**	$ 90(*)***

(*) Fee includes charge for FBI fingerprint and name check.

* Courts charged $50 fee for naturalization petitions.

** INS N-400 fee, effective 12-89, does not include $50 petition fee charged by the courts.

*** $50 fee for naturalization petition will not be required after 10-1-91 because of administrative naturalization.

I-130 petitions: In 1988, most I-130 cases for the offices for which information was requested, were filed locally and forwarded to ports of entry for adjudication. Processing times varied from several weeks to several months, depending on the season and port.

Presently, the I-130s for Los Angeles are filed with the Western Service Center, which processes properly documented cases in approximately 35 days. In Houston and Miami, I-130 cases are filed locally and forwarded to the Southern Service Center for action. Current processing time is approximately 75 days. In New York, I-130 cases are filed locally and forwarded to the Eastern Service Center for action, normally completed within 45 days. Petitions for immediate relatives may be filed and processed locally in conjunction with applications for permanent residence. In such cases, all the offices mentioned have processing times ranging from a low of 120 days to nearly one year, depending on case complexity, time needed to obtain existing files and several other factors.

I-600 petitions: In all INS offices, such cases receive the highest priority. Few take more than 14 days in an expedited case and 60 days in an ordinary case (required for fingerprint and name checks). Cases taking longer are usually the result of disputed documentation or illegible fingerprints rejected by the FBI. Current procedures even provide for pre-filing form I-600A to eliminate entirely the fingerprint clearance delay.

N-400 applications: INS does not have accurate data for processing time of N-400 applications during 1988. Total processing time including INS and the courts varied greatly. Several task forces which were dispatched to large district offices during the past few years also caused processing times to vary. Current INS processing time for naturalization in Los Angeles is 60-90 days (result of a local task force); in New York processing time is 60-90 days; in Houston processing time is about one year; in Miami processing time is 120-180 days. Local managers report that in Miami and Los Angeles current processing is faster than in 1988, in Houston it is slower, and in New York it is essentially unchanged. New resources requested for 1992 will address these problems as will the change to administrative naturalization.

QUESTION 13: GAO, the Justice Inspector General (IG), the Justice Management Division, and others have reported serious weaknesses in INS' financial management system. For example:

-- **in 1984, GAO reported that INS had delinquent accounts receivable of $118 million (GAO/GGD-84-86, July 1984);**

-- **in 1986, GAO reported that INS needed an improved debt collection system (GAO/GGD-86-12, Mar. 1986);**

-- **in 1989, the Justice Management Division said that INS did not maintain adequate control over financial resources in fiscal year 1988 (JMD report 89-9, Feb. 1989); and**

-- **also in 1989, the Justice IG reported that INS was highly vulnerable to fraud and abuse (IG report, July 1989).**

(1) Given these longstanding concerns, what steps have you taken over the past eighteen months to address INS' financial management shortfalls?

ANSWER: INS financial management initiatives include:

- Centralized control of Personnel Services and Benefits funds, including authority to hire;
- Establishment of a comprehensive quarterly budget review process;
- Conversion to FMIS, the Department of Justice's accounting system;
- Strengthened requirements for the performance of standard accounting procedures (such as reconciliations) and for eliminating accounting backlogs;
- Remoting of accounting work to achieve productivity efficiencies;
- Establishment of a commercial lockbox system to collect Inspections User Fees. (Estimated cost saving as a result of decreased check float time was $107,028 in 1990.);
- Performance of desk audits of Inspections User Fees remittances. ($1,223,670 has been collected in 1991 as a result of these reviews.);
- Participation in joint INS/Customs Service user fee audits. ($118,055 in unpaid user fees were disclosed by a recent review.); and
- In January 1991, the launch of a major initiative to improve debt collection processes and systems.

(2) What actions have you taken to implement GAO's recommendation to establish a group of financial management experts to assist you in fixing INS' financial management problems?

ANSWER: The INS financial management problems are a subset of the broader set of management problems described throughout the reports mentioned above. Over the last eighteen months, senior Department officials and Commissioner McNary have worked closely to address the full spectrum of management problems in INS. We did not establish a group of financial management experts as recommended by GAO. However, we did establish a group of experts with broad management expertise, which included expertise in Federal and Department of Justice financial management. While we agree that financial management is an especially critical problem within INS, we felt that it would be most appropriate to acquire expertise which could focus on the entire spectrum of management problems. Financial management is an especially important, but integrated part of the overall management function; therefore, we have been careful not to focus on financial management independent of the broader set of management issues.

We contracted with the National Academy of Public Administration to examine the entire spectrum of management problems at INS. Their report, referred to as the "Carlson Report" was issued in

February, 1991. The report recommends several actions, some of which are already underway and others which will require more time, since they are dependent upon the broader issues and recommendations referenced above. The Carlson report makes a number of recommendations for financial management. One important recommendation is the replacement of the INS accounting system. The Department and INS have jointly initiated a long term project to convert the present INS accounting system to the Department of Justice Financial Management Information System. This project will last four to five years.

QUESTION 14: Over the last five years, has the Department's Office of Legal Counsel issued any opinions related to the issuance and implementation of National Security Decision Directives (NSDD's)? If so, please provide a list of these opinions, including the title, subject, and the date of issuance.

ANSWER: There are no published or publicly available Office of Legal Counsel legal opinions or analyses on this issue, and under the Executive Branch policy on the confidentiality of Department of Justice legal advice, we cannot disclose whether the Office of Legal Counsel has provided legal advice concerning the issue.

QUESTION 15: On December 5, 1990, GAO released a report titled "Information Resources, Problems Persist in Justice's ADP Management and Operations" (GAO, IMTEC-91-4). In this report, GAO made reference to three specific recommendations to strengthen the management of information resources within the Department. Assistant Attorney General Henry Flickinger's response to this report, dated April 5, 1991, failed to specifically address these recommendations. Please provide in detail how the Department will comply with each of the three recommendations.

ANSWER: The first recommendation was that, in order to strengthen Departmental management, I establish a Departmental Case Management System. This effort has been under way at the Department since last summer, when the Assistant Attorney General for Administration commissioned FEDSIM (the Federal Systems Integration and Management Center of the General Services Administration) to conduct a consolidated requirements analysis of all of the Department's case management information needs. This will include not only the United States Attorneys and the six litigating divisions, but also the Department's leadership components as well, with specific attention to the Office of the Attorney General and Deputy Attorney General. This effort is ongoing now.

The second recommendation was that the Senior IRM Official's authority in implementing Departmental IRM decisions be clarified. While we believe that the authorities of the Assistant Attorney General for Administration, who is the senior IRM official for the Department, are clearly set forth at 28 CFR 0.75 (j),(k),(l),(m) and (p), the Department has taken additional steps to respond to this recommendation. The IRM function has been reorganized to place, under a single Deputy Assistant Attorney General for

Information Resource Management, all functions associated with a comprehensive IRM program, including: IRM policy and oversight of component activities, Departmental IRM planning, centralized data center operations, the Departmental telecommunications program, the Departmental office automation program, systems design and development activities, and records management policy, oversight and operations. This new structure creates a complete and comprehensive IRM program at the Department and reemphasizes and highlights the role, responsibility, and authority of the Assistant Attorney General for Administration.

In addition, the Department is in the process of developing an overall Departmental IRM plan.

The third recommendation was to augment, where necessary, the Department's central IRM office capabilities in technical and management areas, ADP contract management, and oversight. The reorganization described above has helped us to begin that process. In addition, we are in the process of augmenting our staff with several computer security specialists and with additional ADP contract staff.

Within the Department, quarterly meetings of senior IRM officials have been initiated to explore cross-cutting issues and to take the benefit of potential joint and cooperative endeavors in such areas as the development of standards and the potential procurement of services and equipment. In addition, the Department has and will continue to participate in GSA's Trail Boss Program to provide key Departmental ADP managers with the capacity to plan, acquire and manage major automated systems.

QUESTION 16: What would be the impact of the President's Crime bill, if enacted in its present form, on the Federal prison population? What would be the added cost to the prison system budget as a result of this increased population?

ANSWER: We anticipate that the proposed Crime Bill will have some effect on future prison population, but we believe this is a small price to pay for the criminal justice reforms contained in the bill. Thus, we reject this question's implicit premise that putting more violent criminals in prison is harmful.

There are few matters of deeper concern to the public than violent crime. We believe that freedom from violent crime is the first civil right of all Americans. For this reason, the Crime Bill will enact increased penalties for firearms, explosives, terrorism, and sex offenses, which will probably increase the total number of inmates within the Federal Prison System and keep these violent offenders from committing new crimes. In addition, drug testing of federal offenders on post-conviction release may affect the inmate population, in that it will enable us to return to prison those who violate the terms of their release by engaging in substance abuse. We believe that public safety is enhanced by holding violators accountable. We agree with Timothy Matthews, Executive Director of the American Probation and Parole Association, who has argued that a high rate of revocations is a mark of a successful supervision program.

W. Lee Rawls, Assistant Attorney General, U.S. Department of Justice, Letter to Hon. Carl Levin, Chairman, Subcommittee on Oversight of Government Affairs, U.S. Senate, Dated April 10, 1991

U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

April 10,1991

The Honorable Carl Levin
Cheirman, Subcommittee on Overeight
of Government Manegement
Committee on Governmental Affeire
United Stetes Senete
Washington, D.C. 20510

Deer Mr. Cheirman:

This responds to your February 21, 1991 letter to the Attorney General regarding events thet occurred lest year in connection with the development of sentencing guidelines for organizetionel offenders.

In your letter, you cite an April 28, 1990 article that appeared in The Washington Post reporting that the Attorney General hed "withdr[evn] the Department's longstanding support for tough mandatory sentences for corporate criminals." Contrary to the suggestions in thet article, the Department of Justice has not withdrawn its support for tough sentences for corporate and other organizational offendere. In fact, the Department has reiterated the need for stringent eentences on e number of occasions since the events diecussed in the Washington Post erticle occurred.

With regerd to your specific requests for information concerning this matter, enclosed ere copies of former Deputy Attorney Generel Ayer's letters of Februery 26, 1990 and March 16, 1990 to the U.S. Sentencing Commiesion. The withdrawal of the February 26 lettar did not represent a repudietion of the Department's position on the need for strong sentencing guidelines for organizetions, but rather, as the March 16 letter states, was prompted by the Attorney Generel's desire to review thoroughly the complex issues involved in sentencing organizational offenders before urging the Sentencing Commission to edopt any particuler epproach. We are enclosing e copy of Deputy Assistant Attorney General Paul L. Maloney's May 24, 1990 statement before the Subcommittee on Criminel Justice of the House Committee on the Judiciary that discusses the letters in greeter detail.

Subsequent to March 16, 1990, et the direction of the Attorney Generel, the Department reexamined the proposels that had been under review by the Sentencing Commission in order to

ensure that consideretion was given to the full range of policy options and concerns. On October 12, 1990, the Attorney General outlined for the Sentencing Commission a set of specific features for incorporation in organizational sentencing guidelines. Assistant Attorney General Robert S. Mueller, III submitted a draft set of guidelines to the Commission on October 22, 1990, that embodied those features. Throughout the review process, the Department has continued to emphasize the need for tough sentences for organizations convicted of criminal offenses. Copies of the Department's October 12 and October 22 submissions to the Commission are enclosed; the Department's proposed guidelines were also published last November at 55 Fed. Reg. 46,611 (1990).

The Justice Department does not maintain logs or records of all incoming communications, and a number of persons who were employed by the Department between September 1, 1989 and March 16, 1990 have since left government service. Accordingly, we caution that there may well have been contacts responsive to your requests of which we are unaware. Moreover, pursuant to our established policy of protecting the confidentiality of the deliberative process within the Executive Branch, we have not set forth any contacts between or among officers or employees of the Executive Branch, or the identities of the Department officials who participated in the formulation of the Department's position on the guidelines.

To our knowledge, and subject to the foregoing qualifications, between September 1, 1989 and March 16, 1990, the Business Roundtable contacted and met with Robert S. Ross, Jr., Executive Assistant to the Attorney General, for the purpose of communicating the Roundtable's views on the subject of organizational sentencing guidelines. The Business Roundtable had previously met with White House officials, and the Counsel to the President had referred the Roundtable to the Justice Department as the Executive Branch's liaison to the Sentencing Commission. Members and staff of the United States Sentencing Commission had contact with various officers and employees of the Department on the subject of organizational sentencing guidelines during the same period. Such contacts occurred at Commission meetings and hearings and in informal discussions. In addition, Stephen A. Saltzburg, then-Deputy Assistant Attorney General for the Criminal Division, discussed the subject with Samuel Buffone, a representative of the Defense Practitioners Working Group Committee.

As far as we know, the Department has not maintained any documentation relative to the contacts set forth above other than the Department's submissions to the Sentencing Commission.

We understand that you have also sent a request for information regarding the development of sentencing guidelines

for organizational offenders to the Counsel to the President. As noted above, White House officials were contacted on this subject by the Business Roundtable between September 1, 1989 and March 16, 1990. Please consider this letter a response to your letter to the Counsel to the President as well.

We hope that this information is useful to your inquiry. If we can be of further assistance, please let us know.

Sincerely,

W. Lee Rawls
Assistant Attorney General

Enclosures

DONALD B. AYER, DEPUTY ATTORNEY GENERAL, U.S. DEPARTMENT OF JUSTICE, LETTER TO WILLIAM W. WILKINS, JR., CHAIRMAN, U.S. SENTENCING COMMISSION, DATED FEBRUARY 26, 1990

1990 FEB 26 PM 4:13

U.S. Department of Justice

Office of the Deputy Attorney General

Washington, D.C. 20530

February 26, 1990

HAND DELIVERY

The Honorable William W. Wilkins, Jr.
Chairman
United States Sentencing Commission
1331 Pennsylvania Avenue, N.W., Suite 1400
Washington, D.C. 20004

Dear Judge Wilkins:

I am writing to express the strong support of the U.S. Department of Justice for the promulgation of sentencing guidelines for organizations by the end of the current amendment period. The establishment of these sentencing guidelines is especially important because of the Congressional mandate to increase significantly the penalties for organizational white-collar criminal conduct. The Department strongly believes that the issuance of mere non-binding policy statements, instead of guidelines, would seriously undermine an important goal of the Sentencing Reform Act.

Opponents of these guidelines are attempting to resurrect an argument used as part of a previous attempt to delay the enactment of the individual sentencing guidelines. At that time, some groups urged the postponement of individual sentencing guideline implementation and a period during which the individual sentencing guidelines would have been only advisory. The argument in support of this approach was the purported need for an adjustment period to the new sentencing system that would provide an opportunity to correct possible flaws.

This proposal was widely rejected. The Department's experience with the individual sentencing guidelines proved that this approach was simply not needed. During the two years that the individual sentencing guidelines have been in effect, the Commission has analyzed and refined them based on their actual application to criminal proceedings. No additional advisory period was warranted.

This same approach should apply to guidelines for the sentencing of organizations. The proposed organizational guidelines were drafted, reviewed, and refined in a very

deliberete end thoughtful manner over e two year period. After the enactment of the guidelines, the Commiseion can carefully monitor the effects of the orgenizetionel sentencing guidelinee. If any modificatione ere needed, the Commiseion can make the necesseary refinemente after reviewing the effecte of the application of these guidelines on ectual criminal prosecutions.

In cloeing, the Department of Juetice reepectfully, and etrongly, euggeets that what ie needed ie the expeditious ieeuance end implementetion of guidelinee. All interested pertiee had ample time to comment. Congreee' deciaion to enact eubetantially increaeed fineo end peneltiee wee a response to well-recognized inadequacies in the prior eentencing lew. Authoritative guidelinee are urgently needed to eeeist in implementing thie Congreseional directive and in preventing eentencing dieparity. The iseuance of mere policy etatements regerding organizetional eanctions would denigrate the truly important eentencing reforme explicitly directed by Congress.

We urge thet the Commieeion coneider our comments, which were eubmitted on February 14, 1990, in its further development of the propoeed guidelinee. We continue to offer our support to the Commieeion in ite excellent efforts in the eree of federal eentencing.

Sincerely,

Donald B. Ayer

Donald B. Ayer
Deputy Attorney Generel

DONALD B. AYER, DEPUTY ATTORNEY GENERAL, U.S. DEPARTMENT OF JUSTICE, LETTER TO WILLIAM W. WILKINS, JR., CHAIRMAN, U.S. SENTENCING COMMISSION, DATED MARCH 16, 1990

U.S. Department of Justice

Office of the Deputy Attorney General

The Deputy Attorney General

Washington, D.C. 20530

March 16, 1990

The Honorable William W. Wilkins, Jr.
Chairman
United States Sentencing Commission
1331 Pennsylvania Avenue, N.W., Suite 1400
Washington, D.C. 20004

Dear Judge Wilkins:

I am writing to advise you that I withdraw my letter dated February 26, 1990, concerning the organizational sentencing guidelines. As you are aware, these guidelines involve many complex issues, some of which are being addressed for the first time. Accordingly, the Department will continue to review and evaluate the difficult issues involved in the promulgation of organizational sentencing guidelines.

Sincerely,

Donald B. Ayer
Deputy Attorney General

Prepared Statement of Paul L. Maloney, Deputy Assistant Attorney General, Criminal Division, U.S. Department of Justice

Mr. Chairman and members of the Subcommittee. We appreciate the opportunity to appear before you today to discuss the development of sentencing guidelines relating to organizations convicted of criminal offenses.

Developing sentencing guidelines for organizational defendants is an important area of the United States Sentencing Commission's responsibility. Establishing such a comprehensive set of guidelines that meets the goals of sentencing articulated in the Sentencing Reform Act of 1984 has been a complex and difficult task to accomplish in general but has proved particularly demanding in connection with organizations convicted of criminal offenses. As you know, the goals of sentencing reform set forth in the Act are: (1) to provide just punishment, (2) to afford adequate deterrence to criminal conduct, (3) to protect the public from further crimes by the defendant, and (4) to provide needed correctional treatment -- i.e., rehabilitation. 18 U.S.C. §3553(a)(2). Accordingly, the Sentencing Commission is required by the Act to establish sentencing policies and practices satisfy those goals. 28 U.S.C. §991(b)(1)(A).

The Department of Justice has voiced its support for strong guidelines for organizational defendants on numerous occasions, and we continue to believe that tough sanctions are needed in order appropriately to punish and deter criminal conduct by

organizations and to meet the other goals of the Sentencing Reform Act.

As the Attorney General has repeatedly indicated, including most recently, during his recent appearances before the full Judiciary Committees of both the House and Senate, pursuing tough penalties for white collar offenses is an "absolute high priority" of the Administration and the Department. Appropriate penalties for white collar criminals, be they individuals or organizations, are essential because their offenses often have the capacity to undermine and erode essential institutions and pose a serious threat to the nation. This perspective is reflected not only in the Department's work with the Sentencing Commission but also in our investigative and prosecutive law enforcement efforts.

A short chronology of recent events surrounding the organizational sentencing guidelines may be helpful to the Subcommittee. As you know, the Sentencing Commission published proposed organizational guidelines on November 1, 1989, which set forth for comment two options for organizational sentencing guidelines. On February 14, 1990, Stephen A. Saltzburg, in his capacity as the Attorney General's designee to the Commission and as ex officio member of the Commission, sent a letter to the Commission recommending that it adopt the proposed guidelines, incorporating the second option with certain specified

modifications and indicating our desire to heve "ths opportunity to considsr the other comments received by the Commission during the comment period end joining in the Commission's review of them." At the heering held by the Commission on February 14, 1990, severel witnesses representing business interests testified that the Commission should delay the promulgation of organizational sentencing guidelines. It wes elso proposed that the Commission issue only non-binding policy statements rather than binding guidelines. In response to these recommendetions, on February 26, 1990, Deputy Attorney Generel Donald B. Ayer wrote to the Commission expressing support for the promulgation of sentencing guidelines for orgenizetional defendants by the end of the emendment period and recommending against the edoption of non-binding policy statements.

Under the Commission's stetutory euthority, emendments or guidelines mey be submitted to the Congress eech year only from Januery until May 1 end doing so requires the affirmetive votes of four Commissioners. In en effort to meet the Mey first dsadlins for this year's emendment cycls, the Commission had established an ambitious schedule for considsration of ell public comment and finalization of the organizationel guidelines. The schedule included ongoing efforts to solicit end consider public comment and required thet all four Commissioners rsech a consansus on the proposed organizational guidslinss no leter than the third wsek in April. Sometime in early March, the Department

laarnad a third possible altarnativa was being considered in eddition to tha two options previously publishad in November, 1989. In addition, wa laarnad that various partias continuad to axprass their comments on tha proposad options to tha Commission.

As you know, on March 16, 1990, Mr. Ayer wrote to tha Commission and withdrew his earliar lattar. He indicated as well that the Departmant will continua to raviaw and avaluata the difficult issuas involved in this araa. The Attorney Ganeral wanted an opportunity to thoroughly reviav tha highly complax matter, before urging tha Commission to adopt eny particular approach to the sentencing of organizational dafendants and in anticipation of tha Commission baing brought up to full strength. At tha diraction of tha Attornay Genaral, therefora, tha Departmant is now systamaticelly raviawing tha proposals publishad by the Sentencing Commission, tha views axprassed by a wide ranga of commentators, and altarnative concapts discussad in the prass and informally raised by tha Commission, in ordar to maka sura that tha full range of policy options and concarns receiva dua considaration.

The complex end difficult issues to be rasolved by the Commission in developing orgenizationel guidelines presant a graat challenge. Let me mention just a fav:

1. How to structure evaluation of loss and/or gain, and the extent to which these should determine the fine.

This issue, relevent to the offense level system, is especially difficult, for example, in the environmental offense area.

2. How to structure guidelines to provide for adequate fines regardless of whether loss or gain resulted.

Some offenses may result in little loss or gein and nevertheless be serious, as when substantiel herm wes threatened but the crimes were detected before the harm could occur, or where the herm that occurred was of e nonmonetery, nonquantifieble neture -- as in e threet to netionel security. If loss or gein do not edequetely reflect the herm of the offense, other indicie of harm must be established. Whet those indicis of herm ere end how they should affect the sentence remain complex and controversiel.

3. Should there be aggravating and/or mitigating factors?

And, if so, how should they be structured end defined, end what weight should be given to them?

As you know, the Sentencing Commission declined to promulgate guidelines for the sentencing of organizations this past amendment period because of the three existing vacancies on the Commission. On Tuesday, April 10, 1990, at a regularly scheduled meeting of the United States Sentencing Commission, Judge George E. MacKinnon requested that the following statement be entered into the record:

> The issuance of Organizational Sanctions is our most difficult task. It requires the Commission with no precedent to write guidelines on a completely new slate for every corporation in the nation. In my opinion such sentencing guidelines are much too important and far reaching to be adopted while there are three vacancies on our seven member Commission. I expressed this concern some weeks ago to representatives of the Justice Department and had hoped that the vacancies would be filled by now. However, this has not occurred.
>
> Accordingly, because of the extraordinary nationwide importance of the matter, and the three vacancies in the Commission, I will not vote to adopt any proposal for corporate sentences during this current amendment period. (Emphasis added)

After Judge MacKinnon's action, Commission chairman William W. Wilkins, Jr., a judge on the U.S. Court of Appeals for the Fourth Circuit, issued the following statement:

> I respect the position Judge MacKinnon has taken. While I had hoped to promulgate guidelines for organizational sentencing this year, I am certain that the Commission will benefit from further study and the insight of additional commissioners, whom I hope will be forthcoming very soon. The Commission has the authority each year from January until May 1 to submit amendments to the Congress. I am confident that guidelines for organizational defendants will be issued next year.

As you know, the President has formally nominated Julie Carnes, chief of the Appellate Section of the U.S. Attorney's Office in Atlanta; Michael Gelacak, an attorney with the Washington office of McNair Law Firm, P.A.; and Federal District Court Judge A. David Mazzone, from the District of Massachusetts to fill the three vacancies.

We expect that three new commissioners will be confirmed by the Senate in the near future and anticipate that our review of the organizational guidelines will be completed by the time the Sentencing Commission has its full complement of members and has begun to focus on this issue. We will continue to work with the Commission to assure that the promulgation of strong guidelines for organizational defendants is consistent with the goals of the Sentencing Reform Act. The Sentencing Commission has also been sensitive to the goal of providing certainty and fairness in meeting the purposes. See 28 U.S.C §991(b)(1)(B). These considerations have guided the development of guidelines for the sentencing of organizations, and we are confident that the Commission will continue to strive to achieve these goals in this context as well.

As the Attorney General himself indicated at the Department's Senate Authorization hearing on May 8, 1990, this review does not in any way represent a repudiation of the Department's position on the proposed sentencing guidelines

options presently available for consideration. Our final views on guidelines for organizational defendants are now simply undergoing review within the Department of Justice. It is our belief that the views stated in our comment letter, including those regarding needed modifications and consideration of the many other comments, will be satisfactorily addressed as a result of this process. Moreover, I am confident that the product of the review will fully reflect the Attorney General's personal commitment, and I am quoting his response to a question regarding organizational sanctions at the Senate Judiciary Committee, "that there is no stronger champion, [than Dick Thornburgh] . . . of securing appropriate sentences for those who commit these [white collar] crimes which have a strong capacity to undermine these important institutions, both in business and in government."

I would be pleased to address any questions you or members of the Subcommittee may have.

DICK THORNBURGH, ATTORNEY GENERAL, U.S. DEPARTMENT OF JUSTICE, LETTER TO WILLIAM W. WILKINS, JR., CHAIRMAN, U.S. SENTENCING COMMISSION, DATED OCTOBER 12, 1990

Office of the Attorney General
Washington, D. C. 20530

October 12, 1990

The Honorable William W. Wilkins, Jr.
Chairman
United States Sentencing Commission
1331 Pennsylvania Ave., N.W., Suite 1400
Washington, D.C. 20004

Dear Judge Wilkins:

For the past several months the Department of Justice, at my direction, has been engaged in a systematic review and evaluation of the complex policy issues involved in the sentencing of organizational defendents. In order to make sure the full range of policy options and concerns received due considaration, our review and assessment included past formal and informal organizational sentencing proposals, the public comments submitted to the United States Sentencing Commission, comments submitted directly to the Department, and alternative concepts discussed in the press, as well as views expressed by various other scholars and commentators.

Since the Commission now has a full complement of members, we thought it most productive to share with you our thinking based upon having completed this thorough review. The continued lack of organizational sentencing guidelines may send an unfortunate message that crimes committed by organizations are not viewed as the serious violations of law they may be. Therefore, it is imperative that the Sentencing Commission approve strong guidelines in this area. The following discussion highlights some of our key conclusions based upon this review.

Fines

We support a system of imposing fines that captures the seriousness of the offense as measured by the Commission's existing ranking of offenses in Chapter Two of the sentencing guidelines. We believe that an offense-level approach, rather than an approach based on gain or loss, accomplishes this purpose and that Option II, published by the Commission last November, is fundamentally sound. The offense-level approach in Option II assures that the seriousness of an offense as measured by the factors the Commission has assigned to offenses in Chapter Two is reflected in the penalty. It also generally assures that the

same ranga of finaa applias to e givan offenae lavel ragsrdlass of the smount of pecuniary losa or gain that can be proved. Of couraa, loaa or gain is not irrelavant to this approach for all offenaas. For monetary offanaea (e.g., fraud and theft) tha calculation of the guidaline offanae laval ia itaalf baaad on tha loaa causad by tha offenaa. Also, loaa or gsin not aubject to reatitution or diagorgemant ahould ba included in any guidaline promulgated to aaaura that the defsndant doas not benafit from the crimaa committed.

A comperiaon of an offenae-level approach and the epproach raflactad in principlea racently adopted by the Commiaaion for purposaa of davaloping e new aat of propoaed guidelinaa showa that the lettar focuaas meinly on the gain or loss cauaed by the offanae. Becauae thia focua ia primarily on gain or loaa snd not other indicators of the seriouanaas of an offenaa, nonmonetary factora that the Commission currently usaa to meaaure the severity of en offense by an individual would not figure in tha calculation of the organizational fina. That ia, the Commiaaion's ranking of offensea by aariouanass, aa indicatad by the asaignment of a particular offense laval, would evaporeta from tha datarmination of an appropriete sanction for an organization under a loaa or gain approach. Nonmonetary harms countad in the currant individual guidelinea in Chaptar Two includa, for axample: a aubatantial likelihood of death or serious bodily injury from en environmental offensa, evasion of national aacurity or nucleer proliferation controla in the contaxt of axport control lawa, frauda involving e conacious or racklesa risk of aerioua bodily injury, end frauda misrapresenting that the dafendant waa acting on behslf of a charitable, educational, or religioua organizstion or a government agancy. Thaaa indicatora of the seriouanaaa of en offense will go unpuniahad in s losa-baaad aystam of calculating organizational finea, unlass the alternativa "loaa" amounts in a tsbla ara aat sufficiantly high. In paat drsfts dsvaloped by the Commiaaion, these smounts ware atrikingly insdequate for aarioua offanaas. Hovevar, sn offense-laval method of calculsting finaa, aa we advocate, assures thst nonmonetary harms are reflacted in the fine beceuse the fine levels are datarminad by the offenae level asaigned to the offanse.

The maximum end minimum doller finea the Commiasion eatablishes ehould be developed to provide an adequste fine for an organizstion es though the offenae were e freud st esch offenae level under the existing guidelines in Chapter Two. The fine renge would than epply to any offense (other then entitrust) undar the existing guidelines for the particuler offense laval in quastion. We also fsvor s feirly broad renge of fines for aach offanae level so that the court haa adequate flexibility to considsr s vsriety of issues, some required for considerstion by statute, 18 U.S.C. §§3553(e) and 3572(e).

Our recent review of organizational sentencing issues has led us to reject one recommendation made by ex officio member Stephen A. Saltzburg in his letter of February 14, 1990. He had recommended an alternative maximum fine of the greater of twice the gross loss or twice the gross gain resulting from the offense, if this calculation produced a higher fine than otherwise provided by Option II. We no longer believe that this alternative maximum fine is appropriate since it is inconsistent with the approach of basing the fine on the seriousness of the offense as reflected in the offense level.

Aggravating Factors

Guidelines for sentencing organizational offenders should provide general aggravating factors resulting in an increased offense level for conduct that indicates increased seriousness of an offense or a greater need for deterrence. The use of aggravating factors is consistent with the individual guidelines, which provide a number of general aggravating factors. The aggravating factors for organizations should include the following, among others: (1) high-level organizational involvement, (2) prior criminal history or prior similar misconduct adjudicated civilly or administratively, (3) violation of a judicial order or injunction, (4) bribery, and (5) risk to national security.

The concept of establishing fine levels that reflect the presumption that frequently occurring aggravating factors (involvement of high-level management, lack of an adequate compliance program) are present in the case is very different from the treatment of aggravating factors in the individual guidelines. We are not sure how this approach would work, whether it would be fair to defendants, and whether appropriate fine levels could be established to reflect these factors. Moreover, many aggravating factors that occur infrequently are, nevertheless, important and should be treated in guidelines, rather than policy statements recommending upward departure.

Mitigating Factors

We believe that guidelines for organizations should establish a number of mitigating factors that reflect reduced culpability or a decreased need for punishment or deterrence. These should include: (1) reporting of the offense to government authorities promptly upon discovering it, (2) a reasonable lack of knowledge of the offense by high-level management, (3) an offense that represented an isolated incident of criminal activity committed despite organizational policies and programs aimed at preventing it, and (4) substantial cooperation of the organization in the investigation or substantial steps by it to prevent a recurrence of similar offenses. A significant reduction in the fine should result if all the mitigating factors

sre present in e given csse. However, we oppose e guideline rsduction of the fine to zero, unless there is sn insbility to psy sny fine, becsuse such e guideline reduction thwarts ths goal of deterring orgsnizstionsl crime. Of course, if e court found s csse so unusual, it might depart from the guidelines to s zero fine, and the Government could then appeal such departure.

With respect to the sggrsvsting snd mitigsting fsctors for involvement of "high-level mansgement," our recent review of ths issues hss led us to conclude thst s nsrrower definition of this term should be incorporsted in orgsnizstionel guidelines thsn reflected in the Commission's propossl published lsst November. Specificslly, we fsvor e definition derived from the Hodel Psnal Code snd would limit "high-level msnsgement" to an officer, director, psrtner, or sny other sgent or employee hsving duties of such responsibility thst such person's conduct msy fsirly be sssumed to repressnt the policy of the orgsnizstion. This definition, unlike thst in the Commission's published drsft, would ordinsrily exclude from "high-level msnsgement" e supervisor of s large number of employees, such ss s plsnt foremsn, who does not hsve orgsnizstion-wide policy suthority. Another chsnge in this srss is slso worth noting. The Februsry 14, 1990, letter registsred opposition to e mitigsting fsctor relsting to s reasonable lsck of knowledge of the crime by high-level mansgement. Howsvsr, our review of the issues hss led us to conclude that the adoption of the nsrrower definition of "high-level mensgement" with its inclusion ss sn sggrsvsting snd mitigsting fsctor sddresses in lsrge degrse the concerns ex-pressed in the comments on the Commission's published drsfts.

Restitution

Guidelines should trest restitution sepsrstely from sny fine imposed snd require restitution to make the victim whole. The degree of culpsbility snd level of other ssnctions imposed should be irrelevsnt to restitution.

Probation

We recommend thst the Commission's guidelines require orgsnizstional probation in certein circumstsnces -- e.g., to ensure psyment of e monetsry pensity, es e mechenism to impose restitution, if the orgsnizstion or ite upper msnagement wss recently convicted of eimilsr mieconduct, or where the court finds thst probation ie necesssry to ensure thst chenges ere made to reduce the likelihood of future criminal conduct. The Commission should sleo provide for eppropriete conditions of probstion that suthorize, when eppropriste, periodic submission of reports to the court or probetion officer by the defendsnt, s ressonsble number of regulsr or unsnnounced exeminstions of books snd records by the probation officer or suditors engsged by the

court, and development of a compliance plan aimed at prevanting a racurrance of criminal behavior.

As a raault of our recent raviaw of organizational aantancing iaauaa, wa now aupport furthar modificatiana of the proviaiana on probation publishad by the Commiaaion in November 1989, beyond thaaa wa racommandad in the latter laat Fabruary. For axampla, while wa continua to baliava that probation ahould be raquirad to aaaura paymant of a monatary panalty, thia probation raquirament ahould only be triggarad if payment ia not to be completad within 30 daya after aantanca ia impoaad. The publiahad propoaal would hava raquirad probation if payment waa not mada in full at the time of aantancing. In addition, wa now baliava that aoma of the racommandad conditiona of probation the Commiaaion propoaad laat Novambar to aaaura paymant of a panalty (a.g., raquiring court approval for paying dividanda or antaring into a margar) ara axcaaaiva and ahould not ba includad in futura policy atatamanta on thia aubject.

We believe atrongly that the points aummarizad above are aaaantial to an affactiva traatmant of organizational crima and are praparad to work clasaly with you and the Commiaaion to draft organizational aantancing guidalinaa which appropriataly addraaa thaaa and other laaaar concarna identifiad during tha couraa of our raviaw. We look forward to working with you to davalop the baat poaibla policy in thia important ara and hopa to diacuaa thaaa thoughts in graatar datail with you in tha naar futura.

Sincerely,

Dick Thornburgh
Attorney General

ROBERT S. MUELLER III, ASSISTANT ATTORNEY GENERAL, U.S. DEPARTMENT OF JUSTICE, LETTER WITH ENCLOSURES TO WILLIAM W. WILKINS, JR., CHAIRMAN, U.S. SENTENCING COMMISSION

U.S. Department of Justice

Criminal Division

Office of the Assistant Attorney General — Washington, D.C. 20530

OCT 22 1990

The Honorable William W. Wilkins, Jr.
Chairman
U.S. Sentencing Commission
1331 Pennsylvania Avenue, N.W., Suite 1400
Washington, D.C. 20004

Dear Chairman Wilkins:

On October 12, 1990, the Attorney General outlined the recommendations of the Department regarding the formulation of an approach to organizational sanctions. Coincident with the review of this issue in the Department, the Commission directed its staff to construct a draft set of guidelines based upon the principles reviewed in August. In the past several days, the Department has reviewed the draft of the Commission Working Group on this subject. I wanted to share with you our initial thoughts after having reviewed this draft.

It is clear that the Commission staff draft represents a different approach to organizational sanctions from that delineated in the Attorney General's letter of October 12. In light of these substantive differences, I thought it would be helpful to the Commission to present a draft set of guidelines which implement the principles outlined in the Attorney General's letter. Enclosed is a copy of our draft.

We understand that the Commission wishes to move forward with the publication of its draft guidelines to solicit public comment. As you know, the Department supports promulgation of strong organizational sanctions in this amendment cycle. To facilitate the full exploration of views of interested parties concerning the differing approaches represented by the Commission Working Group draft and our proposal, we request that the Commission review our submittal and publish it together with the staff draft.

We believe strongly that the interests of the criminal justice system demand the promulgation of guidelines which represent an effective response to organizational crime. The Department is prepared to work closely with the Commission in this effort. We look forward to assisting in developing the best possible policy in this critical area.

Sincerely,

Robert S. Mueller III
Assistant Attorney General

Enclosure

DEPARTMENT OF JUSTICE DRAFT GUIDELINES
CHAPTER EIGHT-SENTENCING OF ORGANIZATIONS

Introductory Commentary

The guidelines and policy statements in this Chapter apply when the convicted defendant in a federal criminal case is an organization rather than an individual. In these cases individuals may or may not simultaneously have been convicted of offenses growing out of the same scheme or plan of criminal conduct.

The goals and purposes of sentencing for organizations are identical to those for individuals. They are: just punishment, deterrence, protection of the public from further crimes of the defendant, and rehabilitation. See 18 U.S.C. §3553(a)(2). Thus, sentencing of a convicted organization can be instrumental in achieving a number of objectives. Restitution, notice to victims, and other corrective measures can be used to remedy harm to victims or otherwise alleviate the consequences of criminal conduct. Imposition of a fine or probation can punish the owners of an organization for its criminal conduct and induce owners and managers to take necessary steps to prevent criminal conduct by agents of the organization. Probation can also be imposed where necessary to enforce any of the above sanctions or to ensure that an organization institutes a remedial compliance program to prevent further criminal conduct by its agents.

As in the case of the guidelines for individuals, the Commission envisions an evolutionary process in which the guidelines will be subject to modification and refinement in light of experience.

PART A - GENERAL APPLICATION PRINCIPLES

§8A1.1. Applicability of Chapter Eight

This Chapter applies to the sentencing of all organizations.

Commentary

Application Note:

1. "Organization" means "a person other than an individual." 18 U.S.C. §18. Organizations include corporations, unions, associations, and partnerships.

§8A1.2. Application Instructions - Organizations

(a) Determine the guideline section in Chapter Two most applicable to the offense of conviction. See §1B1.2 (Applicable Guidelines). The Statutory Index (Appendix A) provides a listing to assist in this determination.

(b) Determine the base offense level and apply any appropriate specific offense characteristics contained in the particular guideline in Chapter Two in the order listed.

(c) If there are multiple counts of conviction, repeat steps (a) and (b) for each count. Apply Part D of Chapter Three to group the various counts and adjust the offense level accordingly.

(d) Determine from Part B of this Chapter the sentencing requirements and options relating to restitution, remedial orders, community service, and notice to victims.

(e) Determine from Part C of this Chapter the sentencing requirements and options relating to fines.

(f) Determine from Part D of this Chapter the sentencing requirements and options relating to probation.

(g) Determine from Part E of this Chapter the sentencing requirements relating to special assessments and forfeitures.

(h) The provisions of Chapter One, Part B (General Application Principles) apply to determinations under this Chapter, except that subsections (a)-(g) above apply in lieu of §1B1.1(a)-(i).

PART B - REMEDYING HARM FROM CRIMINAL CONDUCT

Introductory Commentary

As a general principle, a convicted organization should, as a first priority, be required to make restitution to identifiable victims of its criminal conduct and to take other remedial actions necessitated by that criminal conduct.

§8B1.1 Restitution - Organizations

(a) Except as provided in subsection (b) below, the court shall --

(1) enter a restitution order pursuant to 18 U.S.C. §§3663-3664; or

(2) if a restitution order would be authorized pursuant to 18 U.S.C. §§3663-3664 but for the fact that the offense of conviction was not

en offense under Title 18 or 49 U.S.C. §1472(h),(i), (j), or (n), sentence the organization to probation with a condition requiring restitution, in which case the amount, recipients, and other terms of the restitution condition are to be determined in accordance with 18 U.S.C. §3663(b),(c), and (e) and §3664.

(b) Subsections (a)(1) and (2) above do not apply when full restitution or other equivalent compensation to the victims of the offense has already been made, or to the extent the court determines that the complication and prolongation of the sentencing process resulting from the fashioning of a restitution requirement outweigh the need to provide compensation to any victims.

Commentary

This guideline provides for restitution either as a sentence under 18 U.S.C. §§3663-3664 or as a condition of probation. The provisions of 18 U.S.C. §§3663-3664 require a sentence of restitution for convictions under Title 18 or under 49 U.S.C. §1472(h),(i),(j), or (n), except to the extent "the court determines that the complication and prolongation of the sentencing process resulting from the fashioning of an order under this section outweighs the need to provide restitution to any victims," 18 U.S.C. §3663(d). This guideline, in addition, extends the requirement of restitution to offenses other than Title 18 and Title 49, section 1472(h),(i), (j), and (n) offenses. In such cases restitution, which is to be determined under standards equivalent to those embodied in 18 U.S.C. §§3663-3664, shall be provided as a condition of a sentence of probation. Under those standards, restitution in certain cases may be awarded to a third party who already has provided compensation to the victim. See 18 U.S.C. §3663(e)(1).

Restitution is not required to the extent that the fashioning of an order would unduly complicate and prolong the sentencing process, relative to the need to provide compensation to victims.

§8B1.2. Remedial Orders - Organizations (Policy Statement)

A remedial order, imposed as a condition of probation, may require the organization to correct harm caused by its conduct or to reduce or eliminate the risk that its criminal conduct will cause further harm. Such an order generally will be appropriate unless:

(a) available civil or administrative remedies are adequate and sufficiently expeditious; or

(b) the cost to reduce or eliminate the threat of future harm is not justified in light of the likelihood and seriousness of injury that may result.

Commentary

The purpose of a remedial order is to prevent future harm to victims or to correct harm already caused. A remedial order requiring corrective action by the defendant may include, e.g., product recalls for food and drug violations or "clean-up orders" for environmental violations.

§8B1.3. Community Service - Organizations (Policy Statement)

An organization may be ordered to perform community service, as a condition of probation, where such community service consists of preventive or corrective action directly relating to the instant offense and serves one of the purposes of sentencing set forth in 18 U.S.C. §3553(a)(2). Community service is not a substitute for a fine or restitution.

Commentary

In some instances the convicted organization may possess knowledge, facilities, or skills that uniquely qualify it to repair damage caused by the offense or to take preventive action. Community service directed at repairing damage may provide an efficient means of remedying the harm caused. See §§8B1.1 (Restitution - Organizations) and 8B1.2 (Remedial Orders - Organizations).

In the past some forms of community service imposed on organizations have not been related to the purposes of sentencing. Requiring a defendant to endow a chair at a university or to contribute to a local charity would not be authorized by this section unless such community service provided a means for preventive or corrective action directly related to the offense and served one of the purposes of sentencing set forth in 18 U.S.C. §3553(a)(2). For example, a condition of probation requiring an organization to make its laboratory facilities available to a university would be authorized if it were subject to the limitation that the facilities be used for research to develop new anti-pollution or clean-up techniques related to the instant offense.

§8B1.4. Order of Notice to Victims - Organizations

Apply §5F1.4 (Order of Notice to Victims).

5

Commentary

The provisions of §5F1.4 (Order of Notice to Victims) are applicable to organizational defendants.

PART C - FINES

1. DETERMINING THE FINE - CRIMINAL ORGANIZATIONS

§8C1.1 Determining the Fine - Criminal Organizations

If the court determines that the organization operated primarily for a criminal purpose, the fine shall be set (subject to the statutory maximum) at an amount sufficient to divest the organization of its assets. When this section applies, §§8C2.1 (Determining the Fine Guideline Range - Organizations), 8C2.2 (Determining of the Fine Within the Guideline Range), and 8C4.1 (Fines Imposed upon Owners of Closely Held Organizations) do not apply.

Commentary

Section 8C1.1 provides that where the court determines that an organization operated primarily for a criminal purpose, the fine shall be set at an amount sufficient to remove all of the organization's assets. If the extent of the assets of the organization is unknown, this may be achieved by imposing the greatest fine authorized by statute.

2. DETERMINING THE FINE - OTHER THAN CRIMINAL ORGANIZATIONS

§8C2.1. Determining the Fine Guideline Range - Organizations

(a) The guideline fine range shall be determined under subsections (b)-(d) below, except where the offense guideline in Chapter Two expressly provides a different rule for determining the guideline range.

(b) Adjust the offense level determined pursuant to §8A1.2 (Application Instructions - Organizations) for each aggravating and mitigating factor set forth below:

(1) Aggreveting Factors:

(A) If high-level management aided or abetted, knowingly encouraged, or condoned the offense, add 2 levels.

(B) If the defendant within 15 years of the commencement of the current offense has one or more prior convictions (other than a conviction for a petty offense) or within 10 years of the commencement of the current offense engaged in similar misconduct, as determined by a prior civil or administrative adjudication, add 1 level.

(C) If the commission of the offense constituted a violation of a judicial order or injunction, or of a condition of probation, add 2 levels.

(D) If high-level management aided or abetted, or encouraged obstruction of the investigation or prosecution of, the offense or, with knowledge thereof, failed to take reasonable steps to prevent such obstruction, add 1 level.

(E) If the defendant, in connection with the offense or its concealment, bribed or unlawfully gave a gratuity to a public official, or attempted or conspired to bribe or unlawfully give a gratuity to a public official, add 1 level.

(F) If the offense targeted a vulnerable victim as defined in §3A1.1, add 1 level.

(G) If the offense presented a substantial risk to the continued existence of a financial or consumer market, add 1 level.

(H) If the offense created a substantial risk to national security, add 2 levels.

(2) Mitigating Factors.

(A) If the organization, promptly upon discovering the offense, and prior to the commencement of a government investigation, the imminent threat of a government investigation, or the imminent threat of disclosure of the wrongdoing, reported the offense to government authorities, subtract 1 level.

(B) If high-level management did not have knowledge of the offense and the lack of knowledge was reasonable, subtract 1 level.

(C) If the offense represented an isolated incident of criminal activity that was committed notwithstanding bona fide policies and programs of the organization reflecting a substantial effort to prevent conduct of the type that constituted the offense, subtract 1 level.

(D) If the organization substantially cooperated in the investigation, or if the organization has taken substantial steps to prevent a recurrence of similar offenses, such as implementing appropriate monitoring procedures, subtract 1 level.

Do not apply an adjustment from this subsection if the offense guideline specifically incorporates it or if such factor is inherent in the offense.

(c) The fine guideline range is the amount set forth below corresponding to the adjusted offense level determined above; plus the amount, if any, from subsection (d) below.

Fine Table

Offense Level	Guideline Range		
1	$250	-	$500
2	$500	-	$1,000
3	$850	-	$2,000
4	$1,500	-	$3,500
5	$2,500	-	$6,000
6	$3,200	-	$8,000
7	$4,000	-	$10,000
8	$7,500	-	$18,000
9	$14,000	-	$34,000
10	$25,000	-	$64,000
11	$45,000	-	$103,000
12	$70,000	-	$160,000
13	$90,000	-	$206,000
14	$108,000	-	$240,000
15	$180,000	-	$400,000

16	$300,000	-	$700,000
17	$525,000	-	$1,000,000
18	$700,000	-	$1,520,000
19	$1,100,000	-	$2,850,000
20	$2,100,000	-	$4,750,000
21	$3,250,000	-	$9,000,000
22	$6,500,000	-	$18,000,000
23	$13,000,000	-	$36,000,000
24	$24,000,000	-	$68,000,000
25	$48,000,000	-	$136,000,000
26	$80,000,000	-	$170,000,000
27	$100,000,000	-	$204,000,000

If the offense level is greater than 27, the court shall extend the above table using, for each offense level, the dollar increments used between levels 26 and 27.

(d) Loss or Gain not Subject to Restitution or Disgorgement. Determine the greater of --

(1) any loss caused by the offense that exceeds the amount of restitution made or ordered, or

(2) any gain to the defendant from the offense that exceeds the amount that will otherwise be disgorged by the defendant.

Add the amount from this subsection to the minimum and maximum of the applicable range from subsection (c) above.

Commentary

Application Notes:

1. "Similar misconduct," as used in subsection (b)(1)(B), means conduct that is similar in nature to the conduct underlying the instant offense, without regard to whether or not such conduct violated the same statutory provision. For example, a defendant convicted of improperly disposing of waste by burning has committed similar misconduct if the defendant in the past improperly disposed of waste by discharge into water. The past misconduct is similar to the present offense despite the fact that two different federal statutes proscribe these wrongful waste-disposal activities.

2. "Prior conviction," as used in subsection (b)(1)(B), means conviction by verdict; a plea of guilty, including an Alford plea; or plea of nolo contendere.

3. "High laval managamant," as uaad in aubsection (b), means a peraon who ia an officar; a diractor; a partner; or any other agant or employaa of an organization having dutias of auch reaponsibility that tha conduct of auch person may fairly ba aasumad to rapraaant tha policy of the organization. This dafinition ia darived closely from tha Model Penal Code, § 2.07 (1962). The definition is ralavant to the application of certain aggravating and mitigating factors as well aa to tha imposition of probation under §8D1.1. In practical effact, the dafinition includes such persons as an organizational president or ganaral manager, but not a foreman in a larga plant, in the abaence of participation at higher levels of organizational authority. "High laval management" doaa not apply in tha case of an organization composad of 5 or fewer individuals, including employees.

4. "Aided or abetted," as used in subsection (b), includes all conduct proscribed by 18 U.S.C. §2.

5. Under subsection (b)(1)(E) an anhancement ia applicable where the ralevant conduct (whather or not charged in the count of conviction) included bribing or unlawfully giving a gratuity to a public official, or conspiring or attempting to do so. Thia anhancement appliaa, for exampla, to conduct proscribed by 18 U.S.C. §§201, 205, 212, 213, 292, and 1726.

6. Subsection (d) is designed to ensure that any losa caused by the offensa that is not aubject to raatitution (e.g. where tha victima ara not idantifiable) or gain to tha dafendant that will not otherwiaa ba diagorgad by tha defendant ia taken into account by tha fina guidalina ranga. "Restitution," aa used in subsection (d)(1), includes the defendant'a expendituraa for remedial action undar §8B1.2 (Remedial Ordera), §8B1.3 (Community Sarvica), and §8B1.4 (Order of Notica to Victima). "Any gain to tha dafandant," as used in subaaction (d)(2), maans any profit attributable to the offensa.

7. "Losa" aa uaed in thia section is to be conatruad broadly and includaa, for axampla, damaga to tha anvironment and natural resourcaa and nagative haalth consequencas.

Background: Thia section providaa for the datarmination of the upper and lowar limits of tha fina guidalina ranga.

Subaection (a) providaa that tha guidalina fina range for organizations is datarminad under aubaactions (b) - (d) axcapt where Chapter Two providaa a diffarent rule. Currently, Chapter Two, Part R (Antitruat Offensas) haa a saparate proviaion for astabliahing tha fine guidalina range for thaaa offenaaa.

§8C2.2 DETERMINATION OF THE FINE WITHIN THE GUIDELINE RANGE

(a) Under 18 U.S.C. §§3553(a) and 3572(a), the court, in determining the amount of the fine within the applicable guideline range, is required to consider:

(1) the nature and circumstances of the offense and the history and characteristics of the defendant;

(2) the need for the sentence to reflect the seriousness of the offense, promote respect for the law, provide just punishment, afford adequate deterrence, and protect the public from further crimes of the defendant;

(3) the defendant's income, earning capacity, size, and financial resources;

(4) the burden that the fine will impose upon the defendant or any person who is financially dependent on the defendant;

(5) any pecuniary loss inflicted upon others as a result of the offense;

(6) whether restitution is ordered or made and the amount of such restitution;

(7) the need to deprive the defendant of illegally obtained gains from the offense;

(8) whether the defendant can pass on to consumers or other persons the expense of the fine; and

(9) any measure taken by the defendant to discipline any officer, director, employee, or agent of the organization responsible for the offense and to prevent a recurrence of such an offense.

(b) In addition, the court, in determining the amount of the fine within the guideline range, should consider:

(1) the degree of difficulty of detecting the violation;

(2) any collateral consequences of conviction, including civil obligations arising from the defendant's conduct; and

(3) any other pertinent equitable considerations, including the aggravating and mitigating factors set forth in §8C2.1.

(c) The amount of the fine should always be sufficient to ensure that the fine, taken together with other sanctions imposed, is punitive.

Commentary

Subsection (a) reflects factors that the court is required to consider under 18 U.S.C. §§3553(a) and 3572(a).

Subsection (b) reflects additional factors set forth by the Commission.

Subsection (b)(1) provides that the court should consider, among other factors, the degree of difficulty of detecting the violation due either to the defendant's efforts to conceal the offense or to the inherent difficulty of detecting that particular type of offense. For purposes of general deterrence, offenses that are particularly difficult to detect should receive greater punishment.

3. IMPLEMENTING THE SENTENCE OF A FINE

§8C3.1. Imposing a Fine

(a) Except to the extent restricted by the maximum fine authorized by statute, or any minimum fine required by statute, the fine required by the guidelines shall be that determined under §8C1.1 or §8C2.1, as applicable.

(b) Where the minimum guideline fine is greater than the maximum fine authorized by statute for the count of conviction (or aggregate maximum fine authorized for the counts of conviction), the maximum fine authorized by statute shall be the guideline fine.

(c) Where the maximum guideline fine is less than a minimum fine required by statute for the count of conviction (or aggregate minimum fine required for the counts of conviction), the minimum fine required by statute shall be the guideline fine.

Commentary

This section sets forth the interaction of the fine guideline range with the maximum fine authorized by statute for the count or counts of conviction and any minimum fine required by statute for the count or counts of conviction. Maximum fine levels are set forth in 18 U.S.C. §3571.

When the defendant is convicted on multiple counts, the maximum fine authorized by statute may increase. For example, in the case of a defendant convicted of two felony counts related to a $200,000 fraud, the maximum fine authorized by statute will be $500,000 on each count (an aggregate maximum authorized fine of $1,000,000). If however, the offenses conduct covered by the two felony counts resulted in a total loss of $750,000, the maximum authorized fine would be $1,500,000 (twice the loss).

§8C3.2. Payment of the Fine - Organizations

Immediate payment of the fine shall be required unless the court finds that the defendant is financially unable to make such payment or that such payment would pose an undue burden on the defendant. If the court permits other than immediate payment, it shall endeavor to require full payment at the earliest possible date, either by requiring payment on a date certain or by establishing an installment schedule.

Commentary

When the court permits other than immediate payment, the period provided for payment shall, in no event, exceed five years, 18 U.S.C. §3572(d).

§8C3.3. Reduction of Fine Based on Inability to Pay

(a) The court shall impose a fine below that otherwise required by the applicable guideline if the court finds that:

(1) (A) the primary purpose of the organization was to conduct a lawful activity; and

(B) it is not able and, even with the use of a reasonable installment schedule, is not likely to be able to pay the fine required under §8C2.1; or

(2) imposition of the fine required by §8C1.1 or §8C2.1, as applicable, would impair its ability to make restitution ordered as a result of conviction.

The court shall impose a reduced fine under this section only to the extent necessary to address the issues set forth in subdivisions (1)(B) and (2) above.

(b) If the court imposes a reduced fine under this section, it shall place the defendant on probation in accordance with Part D of this Chapter.

Commentary

Background: Subsection (a)(2) carries out the requirement in 18 U.S.C. §3572(b) that the court impose a fine or other monetary penalty only to the extent that such fine or penalty will not impair the ability of the defendant to make restitution for the offense.

4. OFFSETS

§8C4.1. Fines Imposed Upon Owners of Closely Held Organizations

The fine imposed upon a small, closely held organization may be partially or totally offset by the amount of any criminal fines imposed upon the owners of the organization arising out of the conduct for which the organization was convicted, provided (1) there is substantial identity between the organization and the individual owners who have been convicted of offenses for such conduct, and (2) a majority of owners has been convicted of such offenses.

Commentary

Application Note:

1. For purposes of this section, an organization is closely held when a small number of individuals own a controlling interest in an organization. In order for an organization to be closely held, there need not be complete overlap between ownership and management.

Background: Many organizational defendants are closely held corporations, which for practical purposes, are the alter egos of their owner-managers.

The goal of this section is fairness. In cases in which there is substantial identity between the convicted organization and its convicted owners, a majority of whom have been convicted of offenses arising out of the conduct for which the organization was convicted, the fines against the organization may be offset by the individual fines. In making a determination under this

section, the court should consider the likelihood of the government's collecting the fines imposed on the individual owners.

Only in a case of absolute identity between the organization and convicted individual owners should an offset completely obliterate the organization's fine.

5. DEPARTURES

§8C5.1. Substantial Assistance to Authorities (Policy Statement)

(a) Upon motion of the government stating that the defendant has provided substantial assistance in the investigation or prosecution of the individuals responsible for the offense for which the organization is sentenced, a downward departure may be warranted.

(b) The appropriate reduction shall be determined by the court for reasons it states that may include consideration of the following:

(1) the court's evaluation of the significance and usefulness of the defendant's assistance, taking into consideration the government's evaluation of the assistance rendered;

(2) the nature and extent of the defendant's assistance; and

(3) the timeliness of the defendant's assistance.

§8C5.2. Risk of Death or Serious Bodily Injury (Policy Statement)

If the offense resulted in a foreseeable and substantial risk of death or serious bodily injury and the kind or degree of that risk was not adequately taken into consideration in setting the fine guideline range, an upward departure may be warranted. In making this determination, the court should take into account both the seriousness of the potential injury and the probability of its occurring.

§8C5.3. Other Grounds for Departure (Policy Statement)

To the extent that any policy statement from Chapter 5, Part K, Subpart 2 is relevant to the defendant, a departure from the applicable guideline range may be warranted.

PART D - ORGANIZATIONAL PROBATION

§8D1.1. Imposition of Probation

An organization shall ba sentanced to probation:

(a) if such sentanca is nacassary as a machanism to imposa restitution (§8B1.1), a ramedial order (§8B1.2), or community sarvice (§8B1.3);

(b) if the organization is santencad to pay a monetary penelty, whether restitution, fina, or special assessment, and full payment is not to be completed within 30 days aftar santance is imposed; if probetion is imposed solaly undar this subsection, such probetion shall tarminata when tha organization makas full payment of the penalty;

(c) if tha court imposes a fina below tha fina range, in accordance with §8C3.3; or

(d) in tha following circumstencas:

(1) the court finds that at tha time sentence is imposed tha organization or a member of its high-level management had a criminal conviction within the previous fiva years for similar misconduct to that involved in the instant offensa and any part of tha instant offanse occurred aftar that conviction; or

(2) tha court finds that the offansa indicatad a significant problam with tha organization's policies or proceduras for pravanting crimes, as avidencad, for axampla, by (A) high-lavel managamant involvement in, or ancouragemant or countanance of, tha offense; (B) inadequate intarnal accounting or monitoring controls; or (C) a sustainad or parvesive pattarn of criminal behavior, unless tha court finds that tha problam has alraady been remedied, or that thara is claar assuranca that tha problam will be ramedied (e.g., where tha dafandant will be undar intansive supervision by a regulatory agancy); or

(3) tha court finds that probation is nacessary to ensura that changas are made within the organization to raduca tha likelihood of future criminal conduct.

Commentary

Application Notes:

1. "High-level management," as used in this section, has the same meaning as in Application Note 3 of the Commentary to §8C2.1

2. "Similar misconduct," as used in this section, has the same meaning as in Application Note 1 of the Commentary to §8C2.1.

3. Unlawful activity that has been pervasive throughout the organization or a component of the organization within the meaning of subsection (d)(2) need not be limited to the type of unlawful activity resulting in the offense of conviction.

Background: This section sets forth the circumstances under which a sentence of probation is authorized as a substantive sanction or as a means to enforce another sanction, such as a fine or restitution.

§8D1.2. Term of Probation

When a sentence of probation is imposed, the term of probation shall be sufficient to accomplish the purposes for which probation is imposed but in no event more than five years, and in the case of a felony, at least one year.

Commentary

Within the limits set by the guidelines, the term of probation should not extend beyond the court's immediate objectives in imposing the term of probation.

§8D1.3. Conditions of Probation (Policy Statement)

(a) Any sentence of probation shall include the condition that the organization not commit, or attempt to commit, another Federal, state, or local crime during the term of probation. See 18 U.S.C. §3563(a)(1).

(b) The court may impose other conditions that (1) are reasonably related to the nature and circumstances of the offense, the history and characteristics of the defendant, and the purposes of sentencing; and (2) involve only such deprivations of liberty or property as are reasonably necessary to effect the purposes of sentencing.

(c) If probation is imposed under §8D1.1(b) or (c), it is recommended thet the following conditions be imposed to the extent thet they appeer necessary to secure the defendent's obligetion to pay any deferred portion of an order of restitution or fine:

(1) The organization shall make periodic submissions to the court or probation officer, at intervels specifiad by the court, reporting on the organization's finencial condition and results of business operations and eccounting for the disposition of ell funds received.

(2) The organization shell submit to: (A) a reasonable number of reguler or unannounced examinations of its books end records by the probation officer or euditors engaged by the court; end (B) interrogetion of knowledgeable individuals within the organization.

(3) The organization shall be required to notify the court or probation officer immedietely upon learning of any (A) material adverse change in its business or financial condition or prospects; or (B) the commencement of any criminal investigation or prosecution, bankruptcy proceeding, or major civil litigation or administretive proceeding egainst the organization.

(4) The organization shell be required to make periodic peyments, es specified by the court, in the following priority: (1) the unpaid emount of the orgenization's restitution; (2) any fine; or (3) any other monetary senction.

(d) If probation is ordered under §8D1.1(d), it is recommended thet the following conditions be imposed:

(1) Tha orgenizetion shall be required to develop and submit for approvel by the court e complience plen for avoiding e recurrenca of the criminal behevior for which it wes convicted. Tha court may amploy appropriate experts, including government agency experts, to assess the efficacy of a submitted plan, if necessery. The experts shall be efforded eccess to ell meteriel possessed by the orgenizetion that is necessary to a compre-

hensive assessment of the compliance plan. The court shall approve any plan that appears reasonably calculated to avoid recurrence of the criminal behavior, provided it is consistant with any applicable statutory or regulatory requirement.

(2) Upon approval of a compliance plan by the court, the organization shall notify its employees and shareholders of the criminal behavior and the compliance plan. Such notice shall be in a form to be prescribed by the court.

(3) The organization shall be required to make periodic reports to the court or probation officer, at intervals specified by the court, regarding the organization's progress in (A) implementing any compliance plan required and approved by the court under this subsection; and (B) avoiding the commission of future criminal offenses. Such reports shall be in a form to be prescribed by the court, and (A) shall disclose any criminal investigation or prosecution, and (B) shall not require disclosure of any trade secrets or other confidential business information, including future business plans. Such reports shall be available for review by a government agency with regulatory responsibility over the organization.

(4) In order to monitor whether the organization is following the approved compliance plan, the organization shall submit to: (A) a reasonable number of regular or unannounced examinations of its books and records by the probation officer or experts engaged by the court; and (B) interrogation of knowledgeable individuals within the organization.

Commentary

Subsection (a) sets forth the statutory requirement that each sentence of probation contain a condition that the defendant not commit another Federal, state, or local crime.

Subsection (b) authorizes the court to impose other conditions that (1) are reasonably related to the nature and circumstances of the offense, the history and characteristics of the defendant, and the purpose of sentencing; and (2) involve only such deprivations of liberty or property as are reasonably

necessary to effect the purposes of sentencing. In meeting these requirements, the court should tailor such conditions of probation to the circumstances of the case. For example, the court may determine that a condition of probation is necessary to assure that a defendant not avoid the impact of a fine by inappropriately passing the costs thereof to consumers or other persons.

In addition, 18 U.S.C. §3563(a) provides that if a sentence of probation is imposed for a felony, the court shall impose at least one of the following as a condition of probation: a fine, restitution, or community service, unless the court finds on the record that extraordinary circumstances exist that would make such a condition plainly unreasonable, in which event the court shall impose one or more other conditions set forth in 18 U.S.C. §3563(b).

PART E - SPECIAL ASSESSMENTS AND FORFEITURES

§8E1.1. Special Assessments - Organizations

Apply §5E1.3 (Special Assessments).

Commentary

The provisions of §5E1.3 (Special Assessments) are applicable to organizational defendants.

§8E1.2. Forfeiture - Organizations

Apply §5E1.4 (Forfeitures).

Commentary

The provisions of §5E1.4 (Forfeitures) are applicable to organizational defendants.

Top 100 Referrals

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TOP 100 REFERRALS

	Ref#	Name of Institution	CC#	DIST
1.	1	American Diversified SB	CR-89-773	C/CA
			CR-89-210-R	W/OK
2.	5	Brookside Savings and Loan	90-847	C/CA
			CR-90-592	C/CA
			CR-90-636	C/CA
			CR-90-727-RG	C/CA
			CR-91-354-RG	C/CA
3.	13	Centrust Savings Bank	88-8098-CR-PAINE	S/FL
4.	15	First State Savings Assoc.	SA90CR313	W/TX
5.	17	Citizens Savings and Loan	CR-91-92	OR
6.	18	City Federal Savings Bank	91-57	NJ
			91-59	NJ
			91-60	NJ
			91-61	NJ
			91-62	NJ
			CR-91-223	NJ
7.	19	City Savings	A-90-CR-117	W/TX
8.	22	Columbia Savings and Loan	CR-91-165	C/CA
			CR-91-164	C/CA
			CR-91-166	C/CA
9.	23	Commodore Savings	CR-3-89-008-G	N/TX
			CR-3-89-039-G	N/TX
			CR-3-90-038-H	N/TX
10.	24	Commonwealth S&L Assoc.	90-6228-CR-ROETTGER	S/FL
11.	28	Consolidated Savings Bank	CR-89-773	C/CA
			CR-90-808	C/CA
			90-507-HLH	C/CA
			CR-89-210-R	W/OK
			91-133-MRP	C/CA
12.	32	Cross Roads S&LA	91-CR-18-C	N/OK
13.	36	First California SB (Now Camino Real SB)	CR-88-764-HLH	C/CA
14.	37	Viking Savings and Loan	90-532	C/CA

15.	42	Franklin Savings	CR-3-89-011-T	N/TX
		Creditbanc Savings	A89CR002	W/TX
16.	43	Freedom Federal S&L	90-08-CR-ORL	M/FL
17.	45	General Savings Association	6:90 CR 61	E/TX
			TY-90-13-CR	E/TX
			CR3-91-118-T	N/TX
18.	47	Gold River Savings Bank	CR S 89-168-RAR	E/CA
			91-048-WBS	E/CA
			CR-S-91-222-LKK	E/CA
19.	50	Leader Fed. Bank for Savings	90-20183	W/TN
			3-89-0033	N/TX
20.	51	Hill Financial Savings Assoc.	91-00213	ED/PA
21.	53	Imperial Savings Assoc.	CR 90-852-LEW	C/CA
			CR-90-440-LEW	C/CA
22.	54	Independence Fed. Savings Bank	LR-CR-90-268	E/AR
23.	55	Independent American S.A.	CR-3-89-134-F	N/TX
			CR-3-90-101-T	N/TX
			CR-3-90-102-R	N/TX
24.	57	Lamar Savings Association	A-90-CR-117	W/TX
			A-89-CR-117	W/TX
			SA-89-CR-147	W/TX
			SA-89-CR-178	W/TX
25.	58	Liberty Federal Savings Bank	91-304JB	NM
			91-305JB	NM
			91-306JB	NM
			91-307JB	NM
26.	60	Lincoln Savings and Loan	CR-90-814	C/CA
			CR-91-194-JMI	C/CA
			CR-91-252-RMT	C/CA
27.	62	Mercury Savings	CR 89-20138-WAI	N/CA
28.	63	Meridian Savings	SA-90-232-CR	N/TX
29.	64	Meritbanc Savings Assoc.	H-90-156-SS	S/TX
30.	65	Midwest Federal S&L	3-90-34	MN
			4-90-82	MN
31.	66	Northpark Savings Assoc.	CR-3-89-185-R	N/TX
32.	67	Odessa Savings Assoc.	MO-88-CR-056	N/TX

33.	71	Peoples Heritage Fed. S&L	91-40001-01 91-40002-01	KS KS
34.	72	Republic Bank for Savings, FA	J90-00034 (L)	S/MS
35.	73	Richardson Savings and Loan	CR-3-90-012-T	N/TX
36.	74	Royal Palm Savings Association	90-10316-Y	MA
37.	75	San Angelo Savings and Loan	CR-3-90-003 CR-3-89-115D	N/TX N/TX
38.	76	San Jacinto Savings Assoc.	H-90-324 89-399 CR3-91-0053-H CR3-91-0054-H	S/TX SC N/TX N/TX
39.	81	Stockton Savings Assoc. (Now Soutwest FSA)	S-89-0082	ND/TX
40.	83	Sunbelt Savings Association	CR-3-88-224-H CR-3-89-276R CR-3-90-029G CR-3-90-035-H CR-90-171-T CR3-90-331-H CR7-89-0024 CR-3-89-0183-G CR-3-89-0184-H CR-3-88-154-H	N/TX N/TX N/TX N/TX N/TX N/TX N/TX N/TX N/TX N/TX
41.	84	Siscorp Fidelity Federal S&L Investor's Federal Bank, FSB	CR-88-133-R 90-CR-27-B CR-89-273-W	W/OK N/OK W/OK
42.	86	Trinity Valley S&L Assoc.	1-90-CR-81	E/TX
43.	89	United Savings Bank of WY	91CR041B	WY
44.	90	United S&L Assoc.	CR 90-472 CR 90-554 CR-91-104	NJ NJ NJ
45.	92	Universal Savings Assoc.	H-90-343 H-90-438	S/TX S/TX
46.	93	University Savings	CR-3-89-011-T	N/TX
47.	94	Victor Federal S&L	89-4-CR CR-90-009 89-CR-155-B	E/OK E/OK N/OK

48.	97	Western Savings Assoc.	CR-3-90-092-H	N/TX
			CR-3-90-210-D	N/TX
			CR-3-90-276-T	N/TX
			CR-3-89-154-R	N/TX
			CR3-90-243-G	N/TX
			89-CR-592	N/IL
49.	98	Westport SB	CR F-90-143-EDP	E/CA
50.	99	Westwood Savings and Loan	90-847	C/CA
			CR-90-402	C/CA
			CR-90-592	C/CA
			CR-90-636	C/CA
51.	100	Williamsburg Savings Bank	C-90-240	S/TX

Prepared Statement of Dick Thornburgh, Attorney General of the United States, Before the Federal Courts Study Committee

The work of the Federal Courts Study Committee is vitally important to the Department of Justice. As the Nation's law firm, the Department is, by far, the single largest litigator before the federal courts. Through its 6,000 attorneys, the Department prosecutes 100% of the criminal cases, and initiates or defends 26.5% of all civil cases, which are before the United States District Courts. Similarly, the United States is appellant or appellee in 43.6% of all cases before the United States Courts of Appeals.[1] We therefore have a substantial interest in the efficient and effective functioning of the Judiciary, both from the perspective of a coordinate branch of government, and as a principal litigant.

We wish to commend the Committee for the significant accomplishment of developing its draft report in such a relatively short period of time. While there will be some recommendations with which we do not agree, there are many with which we do agree. We are anxious to work with the Committee, the Congress and the Judiciary to implement those recommendations that we believe have merit.

In making our comments, we are guided by a healthy respect for the separation of powers, which constrains us from commenting on some recommendations that we regard as internal to the Judicial Branch. We do not seek to micromanage the Judicial Branch any more than we would encourage micromanagement of the Executive Branch by either the Congress or the Courts.[2]

GROWTH AND THE FEDERAL COURTS

The federal courts have expanded substantially in the past 20 years, reaching the point at which the chain of command and span of control is stretched to the breaking point. There are now 168 authorized Court of Appeals judgeships and 575 authorized District Court judgeships, and the Judicial Conference last year recommended additional judgeships to accommodate existing caseload demands.[3] The federal courts must assure justice is available and injustice corrected, but must take increasing measures to curb frivolous litigation, unnecessary complaints and dilatory tactics.

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1. *Annual Report of the Director of the Administrative Office of the United States Courts, 1989*, Tables B-1, C-1, D-1 (hereinafter *AO Annual Report 1989*).

2. The Committee recommends that the ability of the Judicial Conference to issue rules and regulations for the federal judiciary should be recognized by statute. *Draft Report of the Federal Court Study Committee* (December 22, 1989) (hereinafter *Draft Report*), at 78. In this technical legal matter, we concur. If the Judicial Conference believes that a statutory authorization is necessary for it to issue rules and regulations for the internal governance of the Judicial Branch, the Executive Branch will support such a proposal. By the same token, however, the Draft Report recommends that Congress permit the judiciary to contract for its own space and facilities and to use the General Services Administration on a contract basis when the Judiciary believes appropriate. *Draft Report*, at 94. We do not support such an attempt to create yet another facilities office, particularly if such a structure would adversely affect the United States Attorneys.

3. The Committee has noted that "Although Congress may find it necessary to add judgeships to meet immediate needs, and may continue to find such additions periodically necessary, the Committee sees disadvantages in making the Article III judiciary too large. Accordingly, the Committee recommends that Congress and the Judicial Conference consider alternative means of coping with the federal caseload problem for purposes of long-term planning before routinely adding new judgeships." *Draft Report*, at 7.

The Department supports justified growth to accommodate existing and reasonably anticipated caseload demands. Obviously, when vacancies occur, we work as rapidly as possible, as the Committee has urged, to enable the President to nominate individuals to fill those vacancies and to obtain their confirmation.[4]

DISTRICT COURT JURISDICTION

1. Diversity Jurisdiction. For many years, the Judicial Conference and the Department of Justice have supported complete elimination of diversity of citizenship jurisdiction, to reserve federal jurisdiction for federal issues. Diversity cases are resolved on the basis of state law, and therefore should be decided in state courts; they consume scarce resources that are needed by the federal courts to handle federal question cases.[5] For example, the Federal Judicial Center has estimated that diversity jurisdiction cases require the equivalent of 193 district judgeships and 22 circuit judgeships, at a cost of over $131 million in the Judicial Branch appropriation.[6]

We continue to support abolition of diversity of citizenship jurisdiction, and so we support the Committee's recommendation that diversity jurisdiction be restricted to apply only to complex multi-state litigation, interpleader, and suits to which aliens are parties. Congress, however, has consistently declined to take this logical, significant step in order to reduce the burdens on the United States courts; only nominal changes have been made to limit diversity jurisdiction.[7] As an alternative, the Committee proposes that suits brought by in-state plaintiffs be removed from diversity jurisdiction; claims for pain and suffering, punitive damages or attorney's fees should not be included in calculating the amount in controversy; and corporations should be considered citizens of every state in which they are licensed to do business.[8] We believe that these are sound alternatives. If diversity jurisdiction cannot be repealed and state law cases given back to the state courts, then it should be tailored to more nearly serve specific federal interests.[9] We also concur

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4. *Draft Report*, at 99.

5. Diversity cases totaled 67,211 of the 233,293 civil cases filed in reporting year 1989, or 28% of all filings. *AO Annual Report 1989*, Table C2.

6. A. Partridge, *The Budgetary Impact of Possible Changes in Diversity Jurisdiction* (Federal Judicial Center, 1989) This is an increase over previous analyses of some $5 million. A. Partridge, *Budget Savings that Would be Achieved Through Changes in Federal Court Jurisdiction* (Federal Judicial Center, March 5, 1987). Complete elimination of diversity jurisdiction would permit the courts to "catch up" with other cases for a number of years before the total number of remaining cases would require additional judgeships to be created.

7. The Judicial Improvements and Access to Justice Act of 1988, Pub. L. No. 100-702 (the same Act that created the Federal Courts Study Committee), raised the jurisdictional amount from $10,000 to $50,000. If past is prologue, however, the increase in the jurisdictional floor will result in a temporary decrease in cases, only to be overrun by exaggerated claims and a new spiral of filings.

8. *Draft Report*, at 9.

9. We also agree with the Committee that if Congress declines to repeal or substantially limit diversity jurisdiction, Congress should repeal 28 U.S.C. § 1441(c), concerning removal of separate and independent claims. *Draft Report*, at 72.

in the Committee's suggestion that the jurisdictional amount be raised to $75,000, and that the jurisdictional floor be indexed.[10]

2. Multidistrict and Mass Tort Litigation. The Committee also recommends that Congress simplify multidistrict jurisdiction by permitting consolidated trial as well as pretrial proceedings, and create a special Federal jurisdiction, based on minimal diversity under Article III, to make possible the consolidation of major related, multi-party, multiforum litigation.[11] We concur in both these recommendations, which would work a significant change in the administration of complex litigation. The Department recently testified in favor of H.R. 3406, which would delineate a unique category of mass tort litigation where the exercise of federal jurisdiction would markedly increase the fair, speedy and efficient resolution of cases and avoid time-consuming, expensive and repetitive liability proceedings before different state and federal courts.[12]

3. Prisoner Cases. A significant area of the federal caseload is in the area of prisoner civil rights cases.[13] The Committee suggests that Congress amend the Civil Rights of Institutionalized Persons Act to eliminate the minimum standards for certification of state administrative procedures, and require exhaustion of administrative remedies for 120 days if the court is satisfied that the administrative procedures are fair and effective.[14] Under current law, only seven states and three localities have adopted the measures required for certification, largely because the burdens imposed by the Act, not our regulations, are onerous.[15] Accordingly, we believe the changes suggested by the Committee are appropriate and will provide prisoners with a reasonable means of resolving disputes without trial by the District Court.

4. Wrongful Discharge Cases. The Committee proposes to allow a test program for Title VII wrongful discharge cases, under which claimants would be able to have their claims adjudicated before the Equal Employment Opportunity Commission instead of the district courts.[16] While we recognize that this procedure would not be made mandatory, we have serious reservations about the proposal, which would require significant statutory and organizational changes as well as substantial resource reallocations to convert the

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10. The recent increase in the jurisdictional amount barely kept up with inflation. Though inflation is often measured by the broad-based Consumer Price Index (the CPI/U), perhaps a more accurate indicator would be the Consumer Price Index for medical costs (CPI/M). Of the 67,211 diversity cases filed in reporting year 1989, 28,107 (42%) were personal injury cases of one form or another. *AO Annual Report 1989*, Table C2. To the extent that diversity jurisdiction is driven by personal injury cases, the jurisdictional amount should probably already be $75,000.

11. *Draft Report*, at 12.

12. Statement of Stephen C. Bransdorfer, Deputy Assistant Attorney General, Civil Division, United States Department of Justice, before the Subcommittee on Courts, Intellectual Property and the Administration of Justice, House Judiciary Committee, on H.R. 3406, "The Multiparty, Multiforum Jurisdiction Act of 1989," 101st Cong., 1st Sess. (November 15, 1989). A copy of this statement will be provided to the Committee.

13. In reporting year 1989, 24,992 "prisoner civil rights" cases were filed. *AO Annual Report 1989*, Table C-2.

14. *Draft Report*, at 24.

15. Civil Rights of Institutionalized Persons Act of 1980, Pub. L. No. 96-247, 42 U.S.C. § 1997 *et seq.*; 28 C.F.R. Part 40 (Department regulations).

16. *Draft Report*, at 49-51.

EEOC to an adjudicatory agency. Even with such changes, many questions would need to be addressed concerning whether administrative adjudication would best serve the mission of remedying and eliminating employment discrimination. The EEOC intends to submit more detailed comments on the Committee's recommendation. Our more general concerns, discussed below, about the Committee's proposals for specialization in other contexts, also are applicable here. Instead, if additional measures are necessary with respect to these cases, the Committee might encourage the courts to consider increased use of alternative dispute resolution mechanisms rather than trying to restrict claimants' resort to the district court.

5. Clarifying Federal Legislation. We agree with the Committee that Congress should also adopt a general statute of limitations, or a series of specific statutes for major legislatively-created federal claims together with a residual statute of limitations, in order to eliminate litigation over which state statute of limitations applies to a particular case.[17] This simple step will eliminate debate over such issues in a substantial number of cases each year. Similarly, we agree with the Committee that Congress should broaden and simplify the present general venue statute, 28 U.S.C. § 1391(a), to eliminate a number of disputes that arise over which district is the proper venue for a suit when a number of districts could be the proper venue.

THE COURTS OF APPEALS

The United States Courts of Appeals often are neglected in our search for expeditious and effective justice at the trial level. We cannot overlook the vital role of appellate review.

1. Case Management. We concur in the Committee's general resolve to review the problems of the courts of appeals over the next five years.[18] The Committee recommends that the Judicial Conference and the Federal Judicial Center undertake an intercircuit study project of the most effective and reliable means of appellate case management, and, in so doing, devise a way to exchange caseload management information between the courts so that all courts have available the most current information on caseload management.[19]

2. Review of Social Security Cases. Among the other recommendations of the Committee is the suggestion that appellate review of social security disability claims in the courts of appeals should be confined to constitutional claims and issues of law.[20] While this adjustment might be beneficial to both the District Courts and Courts of Appeals, as well as provide greater factual finality in an area where there is a strong tendency to "second guess" the factual determinations of the Social Security Administration, we defer

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17. *Draft Report*, at 70.
18. *Draft Report*, at 103.
19. *Draft Report*, at 99.
20. *Draft Report*, at 26.

taking a position on this recommendation at this time.[21] This issue needs to be studied in conjunction with the proposal to create a specialized court to review Social Security disability cases, which is discussed below. We would note, however, that any proposal to treat Social Security disability claimants differently from non-disability Social Security claimants raises serious concerns.

3. Realignment of the Circuits. What the Committee has not done, nor could it have reasonably been expected to do in the short time allotted, is to evaluate measures to return logic to the chaos and historical accident of circuit boundaries. It makes little sense to have one circuit with six judges (the First Circuit) and another with 28 judges (the Ninth Circuit). We must ultimately come to grips with the historical anomalies of the regional circuits and develop ways to maintain consistency and predictability.

INTERCIRCUIT CONFLICTS

One of the major long-range issues facing the judiciary is how the courts of appeals will be able to maintain effective control over their burgeoning appellate dockets. The Committee presents several alternatives, some of which we cannot support.

1. Binding Resolution of Circuit Conflicts. The Committee recommends that Congress consider authorizing an innovative pilot project, lasting over a four year period, monitored by a committee of the Judicial Conference of the United States, for the purpose of freeing the Supreme Court from the need to resolve some circuit conflicts. Under this proposal, the Supreme Court would designate intercircuit conflicts for resolution under the pilot program, and the conflict would be referred to a randomly-selected, uninvolved circuit, sitting *en banc*, whose decision would be binding on all courts, subject only to review on certiorari.[22]

The Department recognizes a need to consider increasing the capacity of the federal court system's ability to resolve conflicting interpretations of federal law. The citizens of this nation deserve to have a single interpretation of the law which governs them; the court system upon which they depend should be able to provide them with greater consistency than it can today. Many studies have attempted to define conflicts, without complete success, and have suggested different methods of resolution. We are interested in studying the Committee's proposed mechanism.

2. Specialized Courts -- Tax Cases. The belief that there are sufficient intercircuit conflicts to warrant action does not, however, justify piecemeal correction through "specialized courts." We oppose the Committee proposal to vest *exclusive* jurisdiction over all civil tax deficiency and refund cases involving income, estate and gift taxes in an expanded United States Tax Court by converting it into an Article III court with a trial

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21. At the same time, we do not believe that it is appropriate, or within the Committee's jurisdiction, to address the internal structure of the Executive Branch, such as the recommendation to restructure the Administrative Law Judges of the Social Security Administration into an independent federal agency. *Draft Report*, at 26. The Department has strongly opposed this idea in Congress. We continue to oppose severing the policy review by the Secretary of Health and Human Services over the adjudication of Social Security cases.

22. *Draft Report*, at 116-17.

division and an appellate division.[23] The Department joins virtually every segment of the tax bar, both public and private, in opposing this proposal.

Shirley D. Peterson, Assistant Attorney General for the Tax Division, has informed the Committee in detail of the reasons for our opposition to this idea. Indeed, the Committee itself candidly admits that this dramatic change cannot be justified as a means of relieving the workload of the federal judiciary. Nor is the proposal warranted by any deficiencies in the quality of the decisions rendered in tax cases. The current system works well, and, contrary to the Committee's suggestion, does not foster undue uncertainty in the tax law. Recent studies, including one conducted by our Tax Division, indicate that there are very few unresolved intercircuit conflicts in the tax field. Moreover, the proposed reform would not eliminate such conflicts, as disagreements could still arise between the regional circuits and the appellate division of the new Tax Court on substantive income, estate and gift tax issues.

The Committee also suggests that tax cases should be heard by judges with special expertise. We disagree. We believe that generalist judges play a critical role in the adjudication of tax disputes, balancing the technical expertise of the Tax Court with insights from other disciplines. Tax disputes do not exist in isolation from the affairs of the communities in which they arise, but grow out of and reflect the life and the law of those communities. They are appropriately resolved by generalist judges who know and understand the affairs and transactions to which the tax laws are applied. Generalist judges also help ensure that the tax laws remain understandable to American taxpayers, who are expected to apply these rules to their everyday affairs.

Most importantly, we are gravely concerned that the proposed centralization of tax litigation would leave the American taxpayers with the impression that the judicial system does not adequately protect their rights. Such a belief could undermine the voluntary compliance with the Internal Revenue laws that all concede is the cornerstone of the most effective system of taxation in the world. The Commissioner of Internal Revenue capsulized the Department's concerns about the proposal's impact on taxpayer compliance, stating that he fears the proposed reform could "reduce taxpayer confidence" and undercut voluntary compliance.

This proposal is opposed by virtually every segment of the tax bar, including the Department of Justice, the Internal Revenue Service, the Chief Judges of the Tax Court and the Claims Court, a Task Force of the American Bar Association Tax Section, and the New York State Bar Association.

Accordingly, the Department believes that this proposal is ill-conceived and should be eliminated from the Committee's final recommendations.

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23. *Draft Report*, at 29. Federal district courts would retain their present jurisdiction over criminal trials, IRS collection proceedings, summons enforcement and, presumably, bankruptcy cases in which tax issues are presented. The district courts would also retain jurisdiction over suits not involving income, estate or gift taxes, principally cases involving excise taxes, including employment taxes.

3. Specialized Courts – Bankruptcy Appeals. The Committee also recommends that each circuit create "bankruptcy appellate panels" and further suggests that joint panels could be created among neighboring circuits.[24] Quite to the contrary, we believe that Article III judges should pay closer attention to bankruptcy proceedings because bankruptcy matters, like tax issues, do not arise in a vacuum, but rather as an integral thread within the fabric of the law. Not only should bankruptcy appeals be assigned to generalist judges, but all such contested matters should be handled by a judge with a broader view of the law than this single area.[25]

4. Specialized Administrative Court. The Committee has stated its opposition to the consolidated review of federal administrative agency orders in a specialized Court of Administrative Appeals.[26] We agree that administrative law cases are not an appropriate or fruitful subject of specialization – even if the caseload were manageable.

5. Specialized Court for Disability Cases. The Committee has resurrected the notion of creating a new Article I court, the Court of Disability Claims, modeled on and perhaps joined to the new Court of Veterans Appeals. This disability court would review decisions on social security disability benefits entered by the Administrative Law Judges.[27] Though the number of social security cases has declined sharply in recent years,[28] we do not foreclose consideration of such a court. However, until a specific framework for a new court is presented, we are unable to take a definitive position on the Committee's proposal.

For the reasons summarized above, the Department generally opposes creation of new specialized courts. "To speak ill only of the dead, the disadvantages of the simple specialized court were most fully revealed by the experience of the Commerce Court of the United States."[29] The potential for "capture" of the court by special interests, the perception of "second class justice," and the possible divorce of a single area of the law from the mainstream of legal development, each signal great caution in embracing specialized courts.

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24. *Draft Report*, at 33.

25. We also oppose the Committee's recommendation that Congress amend the law to provide that the consent to findings of a bankruptcy judge in "non-core" proceedings be implied unless an objection to them is raised within thirty days. *Draft Report*, at 33. We have no objection to the suggestion that 28 U.S.C. §§ 1334, 1452, and 11 U.S.C. § 305, be amended to make clear that appeals from the district courts to the courts of appeals are prohibited, rather than from bankruptcy courts to the district courts. *Id.* The restructuring of the bankruptcy courts after *Northern Pipeline Construction Co. v. Marathon Pipe Line Co.*, 458 U.S. 50 (1982), should not be disturbed.

26. *Draft Report*, at 37.

27. *Draft Report*, at 26.

28. All categories of "Social security" cases, as defined for statistical purposes by the Administrative Office of the United States Courts, have declined to 10,190 in reporting year 1989 from a high of 29,985 in reporting year 1984. Using only the "disability insurance" subcategory as a fairer measure, the caseload declined from 11,412 in 1988 to 7,413 in 1989. *AO Annual Report 1989*, at 5, Table C-2.

29. Carrington, Meador & Rosenberg, *Justice on Appeal* 168 (1976). This ill-fated court, created in 1910 to review Interstate Commerce Commission cases, was abolished in 1913.

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CRIMINAL PROSECUTIONS AND CASELOAD

Given the preeminent interests of the Department in the enforcement of the criminal laws, those portions of the Committee's recommendations in this area are of particular interest to us. Unfortunately, we have a number of differences with the Committee on this score.

1. Judgeships and Judicial Resources. The Committee's Draft Report suggests that Congress appropriate resources to enable the federal courts to deal vigorously and effectively with their enlarged criminal caseload. Specifically, the Committee recommends that Congress provide the resources requested in the Judicial Conference report of March 1989, as well as additional judgeships.[30] As has been recognized on numerous occasions, the criminal and civil justice system is a "pipeline" through which a limited number of cases can flow at each stage of the process without creating a backlog. It is essential to effective criminal prosecution that defendants be brought to justice as rapidly as possible. The only alternative to the creation of a backlog is the expansion of resources.

Accordingly, the Department of Justice concurs in the general request for more judicial resources to handle drug prosecutions. I note that the Administration's National Drug Control Strategy, announced last week, specifically supports 75 new judgeships and an additional $403.2 million to fund drug-related activities and support services for the judiciary.[31]

2. Drug Enforcement Strategy. Unfortunately, the Committee goes further than the sound proposals just described. While the Committee acknowledges the magnitude of the drug problem and the need for federal courts to play a role, it suggests that heavy reliance upon federal courts for drug law violations is overwhelming the courts and is detrimental to other constitutional and statutory responsibilities. Accordingly, the Committee seeks to diminish the proper role of the Federal Judiciary by shifting drug enforcement to the State courts: "To the extent that Congress can provide additional federal funds for drug enforcement, those funds should be used primarily to provide federal assistance for drug enforcement at the critical state and local level, including resources for local assigned counsel, and not to fund further federal prosecutions."[32]

We of course understand the need to bolster the ability of states and localities to enforce their drug laws vigorously, and the Administration has proposed substantial increases in funding for that purpose.[33] However, we disagree strongly with the Com-

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30. *Draft Report*, at 16; *see Impact of Drug Related Criminal Activity on the Federal Judiciary* (March 1989).

31. *National Drug Control Strategy* at 22 (Jan. 25, 1990).

32. *Draft Report*, at 17. "An effective drug enforcement strategy requires a partnership between the federal government and the states, with each partner playing a distinctive role. The campaign against drugs must be fought not only in the federal courts, but also in the state judicial systems. Given the small size of the federal judiciary, federal drug prosecutions must be limited to cases that cannot be effectively prosecuted by the states." *Id.*

33. In Fiscal Year 1991, the Department of Justice is seeking $492 in state and local law enforcement funding, a 228% increase in just the last two Fiscal Years. *National Drug Control Strategy* at 13-14 (Jan. 25, 1990).

mittee's recommendations, which are founded on a fundamental misconception of the role of federal law enforcement in the national strategy against drugs.

Underlying the Committee's recommendation is the assumption that the increased burden on the courts is the result of the federal government's straying from its federal mandate. To the contrary, the federal caseload has increased simply because of the federal government's need to respond vigorously with stronger drug enforcement measures. More complex cases, including pretrial detention hearings and forfeiture proceedings, require additional court time, and more cases match the profile targeted for federal enforcement. The federal government does not measure its success in the war on drugs by simply reviewing the number of convictions obtained. We look to the quality of the cases brought and the size of the criminal organizations that have been successfully prosecuted.

In recent years, Congress has enacted a number of major initiatives to strengthen the federal government's ability to wage the war on drugs, and those efforts reflect a clear policy choice that drug and drug-related cases, such as forfeiture actions and money laundering prosecutions, will continue to be a significant part of the workload of the federal courts. The Committee's recommendations essentially would have the federal government abandon large portions of the drug enforcement field to the states, even though it is becoming increasingly clear that many local drug networks have national and sometimes international roots that demand a coordinated federal response.

The Department's policy opposes any attempt to intrude into areas that could, as well or better, be handled by the states. Through the Law Enforcement Coordinating Committees (LECC) in each District and the Organized Crime Drug Enforcement Task Forces (OCDETF), we have gone to great lengths to focus federal resources where they are most needed, including considerable efforts to mesh our investigative and prosecutive efforts with those of the states.[34]

3. Sentencing Guidelines. The Committee also recommends that Congress amend the Sentencing Reform Act to state that the Guidelines promulgated by the Sentencing Commission are general standards regarding the appropriate sentence in the typical case, not compulsory rules. Under this approach, the trial judge would have plenary authority to depart from the presumptive sentence under the Guidelines, subject only to appellate review for abuse of discretion. The exercise of discretion would be based upon factors such as an appropriate plea bargain or the defendant's personal characteristics and history.[35]

We believe that these recommendations would undercut the major provisions of the Sentencing Reform Act -- a major accomplishment for which the Department of Justice

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34. *See National Drug Control Strategy* at 15-17 (Jan. 25, 1990) (describing state and local coordination efforts of OCDETF, DEA State and Local Task Forces, and the Supply Reduction Working Group); *see also National Drug Control Strategy* at 17-28 (Sept. 5, 1989). Moreover, *The National Narcotics Prosecution Strategy*, prepared by the National Drug Policy Board in early 1988, describes an overall "strategy . . . to ensure that state and local law enforcement authorities are properly staffed, equipped, funded, and trained to maximize the impact of drug enforcement efforts within their jurisdictions."

35. *Draft Report*, at 61.

fought for many years. These recommendations would return to the federal courts the pre-Guidelines sentencing system characterized by both uncertainty and unwarranted disparity. Review only for abuse of discretion would be a seriously inadequate method of maintaining evenhanded treatment of defendants.

To some extent, the Committee's criticisms merely pertain to the specific provisions of the Guidelines themselves rather than to the idea of determinate sentencing. This is particularly true of its argument concerning a judge's ability to take account of the personal history of the defendant. Existing Guidelines allow for a range of sentencing within which such factors can be weighed and, in appropriate circumstances, allow departures from the Guidelines. The Sentencing Commission can also revise its Guidelines based upon additional experience. While the Guidelines do restrict the range of appropriate sentencing more than some judges might prefer, that is the whole purpose of determinate sentencing.

Moreover, I note that the Guidelines also restrict the prosecutors in their plea negotiations. We are working to complete the adaptation to the new procedures and have proposed that the Sentencing Commission refine the guideline applicable to "acceptance of responsibility" to enhance its use as a plea bargaining tool. As you know, I have issued a directive to all Department prosecutors on this point,[36] and I am determined to make the plea bargaining process work in a way that reduces unwarranted disparities.

The Committee's draft report also criticizes the new sentencing system by asserting that Guideline sentencing has increased the workload of the federal courts.[37] In part, this increase in litigation reflects the fact that the Guidelines are still relatively new, having been in full operation for only one year since the Supreme Court upheld them.[38] A major transition such as this can be expected to take a number of years before it operates smoothly. Moreover, even though sentencing hearings may require more time under the Guidelines than before, that simply reflects the greater equity of providing greater certainty for both defendants and prosecutors.

4. Habeas Corpus. The Committee makes several problematic recommendations on the subject of habeas corpus reform. Two of its recommendations would preserve the existing opportunities of state prisoners to engage in repetitive habeas corpus filings, and to obtain new evidentiary hearings in federal habeas corpus proceedings despite a full and fair hearing of their claims at the state level. A third recommendation would overturn recent Supreme Court decisions limiting the retroactive application of subsequent changes in the law in habeas corpus proceedings.[39]

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36. Memorandum to all Department of Justice Litigators, "Plea Bargaining Under the Sentencing Reform Act," March 12, 1989.

37. *Draft Report*, at 60.

38. *Mistretta v. United States*, 109 S. Ct. 647 (1989).

39. *Draft Report*, at 54-56 (successive petitions), 56 (fact-finding), and 57-59 (retroactivity). *See also id.* at 136-37 (federal-state council to consider further habeas reforms).

The Department strongly opposes these draft recommendations and urges the Committee to delete them from its report. If the Committee wishes to deal with this area in its recommendations, it should endorse habeas corpus reforms addressing the real problems of litigation abuse and lack of reasonable finality of judgments that now plague the administration of criminal justice in the United States. The Department has endorsed important reforms that will provide adequate opportunities for habeas corpus review of meritorious claims, but also will relieve the courts of wasteful, repetitious and frivolous cases by requiring that habeas corpus applications normally be filed within one year of the exhaustion of state remedies, by requiring deference to fair and reasonable ("full and fair") state adjudications, and through other procedural reforms.[40] The Committee should consider these reforms fully.

In relation to the particularly acute problems of dilatory defense tactics and repetitive litigation in capital cases, the Department has endorsed the general approach recommended by the Powell Committee, which proposed reforms that would broaden the availability of appointed counsel to represent capital defendants in state review proceedings and afford such a defendant a complete opportunity to raise his claims in federal habeas corpus proceedings following the conclusion of state review.[41] After all such claims were resolved, further federal review, including successive habeas corpus proceedings, would be limited to extraordinary cases in which the defendant raises a claim that casts doubt on his factual guilt, and the failure to raise the claim at an earlier point is the result of state action in violation of federal law or the unavailability of the legal or factual basis of the claim.[42]

Delay in the review and execution of capital sentences in this country has reached crisis proportions. In 1988, 296 individuals were convicted of first degree murder and sentenced to death under the careful procedures outlined by the Supreme Court since *Furman* v. *Georgia*, 408 U.S. 238 (1972). At the end of 1988, there were over 2,000 state prisoners under sentence of death. In that same year, only 11 capital sentences were actually carried out. The average delay from time of conviction and sentence to time of execution of sentence in 1988 was six years and eight months.[43]

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40. Title VI of the President's proposed Comprehensive Violent Crime Control Act, S. 1225 and H.R. 2709, 101st Cong., 1st Sess. (1989).

41. *Report of the Ad Hoc Committee of the Judicial Conference on Federal Habeas Corpus in Capital Cases* (Aug. 23, 1989) (the *Powell Committee Report*). *See* Statement of Assistant Attorney General Edward S.G. Dennis, Jr., Before the Senate Judiciary Committee Concerning the Death Penalty 11-12 (Oct. 2, 1989).

42. *See Powell Committee Report*, at 5 ("In most cases, successive petitions are meritless, and we believe many are filed at the eleventh hour seeking nothing more than delay. . . . The foregoing types of abuses have no place in a rational system of justice. The merits of capital cases should be reviewed carefully and deliberately . . . [b]ut once this review has occurred, absent extraordinary circumstances there should be no further last-minute litigation.").

43. *See* United States Department of Justice, Bureau of Justice Statistics, *Capital Punishment 1988*, at 1. Much of this delay is attributable to the successive presentation of claims in repetitive petitions for federal habeas corpus. *See Woodward* v. *Hutchins*, 464 U.S. 377, 380 (1984) ("A pattern seems to be developing in capital cases of multiple review in which claims that could have been presented are brought forward -- often in piecemeal fashion -- only after an execution date is set or becomes imminent."). Obviously, the present system has the effect of substantially undermining the effectiveness of the death penalty as both a deterrent and as a retributive expression of society's moral outrage concerning the most heinous of intentional killings. As Justice Powell put it in his testimony before the Senate Judiciary Committee, "[t]he hard fact is that the (continued...)

Concerning the recommendation not to change fact-finding procedures, the Committee's supporting comment seeks to bolster this recommendation by pointing to a low incidence of "trials" in habeas corpus cases. However, review of state fact-finding on federal habeas corpus is not limited to cases in which the habeas court conducts a hearing to take additional evidence. The real issue to be addressed in this area is the standard governing the review by federal habeas courts of state court determinations. The habeas corpus reforms in title VI of the President's violent crime bill would establish stronger rules of deference to prior state adjudications.[44] The general principle is that fair and reasonable ("full and fair") state adjudications would be respected, both in relation to legal and factual issues. Identical standards of review, and the one-year time limit, were included in the habeas corpus legislation that was overwhelmingly passed by the Senate in 1984.[45]

Finally, we strongly oppose the Committee's recommendation to broaden retroactive applications of changes in the law, a regressive step which is at odds with the important objective of securing reasonable finality of criminal judgments. Recent Supreme Court decisions limit the retroactive application of changes in law if they occur after the judgment has become final (*i.e.*, after completion of all direct appeals).[46] The Committee's proposal would allow challenges in habeas corpus proceedings to convictions or sentences that were proper under all legal standards at the time the judgments became final on the asserted ground that subsequent changes in the law were "clearly foreshadowed" by earlier cases, and would waive the general restrictions on retroactivity for claims concerning such issues as the performance of counsel.[47] Such claims potentially could be raised after a lapse of years or even decades, even though the asserted change in the law serves no purpose of protecting the innocent and does not affect the state's power to criminalize conduct or impose a penalty. Overall, the effect of this recommendation would be to restore the chronic problems of unpredictability, disparate treatment of similarly-situated defendants, and lack of reasonable finality of judgments that plagued habeas corpus adjudication before the Court's articulation of the current standards in *Teague* and *Penry*.[48]

5. Abolition of the Parole Commission. The Committee recommends extending the life of the United States Parole Commission (or a successor agency) to provide parole eligibility and revocation hearings with respect to "old law" prisoners who will remain in the

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43.(...continued)
laws of 37 States are not being enforced by the courts." Statement of Justice Lewis F. Powell, Jr. (Retired), November 8, 1989, at 4.

44. S. 1225 and H.R. 2709, 101st Cong., 1st Sess. (1989).

45. S. 1763 (98th Cong.). *See* S. Rep. No. 226, 98th Cong., 1st Sess. 6-10, 16-18, 22-29 (1983) (committee report).

46. *Teague* v. *Lane*, 109 S. Ct. 1060 (1989), and *Penry* v. *Lynaugh*, 109 S. Ct. 2934 (1989).

47. It also encourages courts, in effect, to issue advisory opinions addressing the merits of certain claims that cannot be applied to the litigants before them because of the limits on retroactivity.

48. *See generally Teague*, 109 S. Ct. at 1069-75.

federal system after the scheduled abolition of the Commission in 1992.[49] The Department of Justice agrees that further action must be taken, and we have under consideration a proposal to address the problem.[50]

In addition to any potential legal problem,[51] phasing out the Parole Commission raises two substantial administrative problems. First, if no agency is empowered to conduct parole hearings and to review the release dates previously set by the Parole Commission, there could be no effective administrative response to a prisoner with a parole date who commits serious misconduct while in prison, other than by a new criminal prosecution if that is available. Many of these prisoners will be serving lengthy sentences, and they will constitute a long-term problem for prison management.

Second, the transfer of about 16,000 "old law" parolees to the jurisdiction of the federal courts on November 1, 1992, will place significant burdens on federal judges. Having revocation and reparole matters handled by a single authority clearly makes better administrative sense than a division of responsibility between the executive and judicial branches.[52]

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49. One problem arises from the repeal of the federal parole laws in the Sentencing Reform Act of 1984, effective as to all offenses committed on or after November 1, 1987. The Act further provided that, before the U.S. Parole Commission is eliminated on November 1, 1992, it must make final release determinations for all prisoners who are still within its jurisdiction. Pub. L. No. 98-473, § 235, as amended; *see* 18 U.S.C. § 3551 note. However, the Act failed to make any provision for periodic parole hearings in the case of eligible prisoners whose release dates will keep them in prison for more than 18 or 24 months after the abolition of the Commission in 1992 (as required by 18 U.S.C. § 4208(h) for old-law prisoners), nor for individuals who committed their offenses before November 1, 1987, but are not imprisoned until after November 1, 1992 (and are entitled to parole by virtue of section 235(a)(1) of the Sentencing Reform Act, as amended).

50. We are not convinced that the Committee has taken the correct approach with respect to revocation of supervised release, and have some doubts about the underlying legal analysis, particularly about whether a magistrate as opposed to a judge can properly make the final decision. We are currently giving considerable thought to these issues. The Committee should be aware of the potential impact of this recommendation upon the U.S. Marshals Service, which is already experiencing great difficulty nationwide in finding temporary detention space for federal prisoners. The number of prisoners in Marshals Service custody each day has grown by more than 150 percent since 1984, and in FY 1989 alone, the Service's daily prisoner population increased by 32 percent. Moreover, to the extent judicial hearings on revocation of supervised release would be held before the courts that issued the warrant for the defendants, as opposed to the courts in the district in which they were taken into custody, the Marshals will encounter serious problems in transporting the individuals to the court and in finding local jail space.

51. "Old law" prisoners will have a strong claim to the periodic parole hearings presently required by 18 U.S.C. § 4208(h), which could not be eliminated without raising serious *ex post facto* concerns. *See Warden v. Marrero*, 417 U.S. 653, 663 (1974) (dictum); *Rodriguez v. U.S. Parole Commission*, 594 F.2d 170 (7th Cir. 1979), and *Graham v. U.S. Parole Commission*, 629 F.2d 1040 (5th Cir. 1980). This also would be the case for the small number of "old law" offenders entering the system after November 1, 1992, who would be denied any parole consideration at all. There will also be a certain number of prisoners, including foreign transfer treaty and parole revocation cases, who will also come into federal prisons after November 1, 1992, and who would be eligible for review by the Parole Commission but for its abolition. Returned parole violators would add to the *ex post facto* problem (because 18 U.S.C. § 4208 requires that they be given initial parole hearings), and foreign transfer treaty cases will clearly require some legislative disposition if the Commission is to be eliminated on schedule. *See* 18 U.S.C. § 4106A.

52. We estimate that in FY 1993, the courts would conduct approximately 2,352 parole revocation hearings, in addition to other duties in relation to parolees. On June 23, 1989, the Probation Committee of the U.S. Judicial Conference passed a resolution which noted its approval of this approach.

CIVIL PROCESS REFORMS

1. Alternative Dispute Resolution. The federal courts have been experimenting with several different Alternative Dispute Resolution (ADR) mechanisms, including mini-trials and court-annexed arbitration. The number of district courts involved in ADR experimentation was recently enlarged to 20 by the Judicial Improvements and Access to Justice Act of 1988.[53]

The Committee report suggests a massive expansion of this effort. While many ADR techniques can be useful, and are used by the United States,[54] the Department must oppose any use of binding arbitration involving the government. Jurisdictional defenses require disposition by an Article III judge and, as Assistant Attorney General William Barr of the Office of Legal Counsel is explaining in his testimony this morning on ADR in the administrative setting (much of which applies with equal force to the judicial setting), binding arbitration is also inconsistent with the Appointments Clause.[55]

Because we believe it is essential to develop alternatives to the full-scale litigation of disputes involving the government, we have encouraged participation by our attorneys in a variety of other experimental ADR methods. These efforts have included the issuance of a policy statement encouraging the use of mini-trials, actual participation in mini-trials, and support for judicially-supervised alternative dispute resolution techniques. The Civil Division's Commercial Litigation Branch has cooperated with the United States Claims Court in the development of General Order No. 13, which establishes an alternative method of dispute resolution using a settlement judge. The Civil Division's Torts Branch participates in and is responsible for the administrative claims process developed under 28 U.S.C. § 2672 for Federal Tort Claims Act cases.[56] Through this process in 1988, 214

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53. *See* note 7, *supra*.

54. *See* 28 C.F.R. § 50.20 (1988). The Department "recognizes and supports the general goals of court-annexed arbitration, which are to reduce the time and expenses required to dispose of civil litigation." § 50.20(a)(1).

55. Statement of William P. Barr, Assistant Attorney General, Office of Legal Counsel, United States Department of Justice, before the Subcommittee on Administrative Law and Governmental Relations, House Committee on the Judiciary, Regarding the Use of Alternative Dispute Resolution by Federal Agencies (H.R. 2497), 101st Cong., 2nd Sess. (Jan. 31, 1990); *see also* Statement of William P. Barr, Assistant Attorney General, Office of Legal Counsel, United States Department of Justice, before the Subcommittee on Oversight of Government Management, Senate Committee on Governmental Affairs, Regarding the Use of Alternative Dispute Resolution by Federal Agencies (S. 971), 101st Cong., 1st Sess. (Sept. 19, 1989). The Department's statement on H.R. 2497 suggests a modification of the bill that is acceptable to the Department and to the American Bar Association. A copy of this testimony will be provided to the Committee.

56. Regulations issued by the Department of Justice for implementing that administrative process (28 C.F.R. Part 14) are applicable throughout the government. Because of our widespread use of ADR techniques in FTCA cases, the Department does not believe that the Committee's recommendation of creating a $10,000 jurisdictional amount for these cases would have any significant effect. *Draft Report*, at 48. There are very few cases in the federal courts where the claim is for less than $10,000 because the administrative review process and ADR do work. Creating a formal structure for small claims might require greater resources for a less productive dispute resolution system.

administrative tort claims for amounts exceeding $25,000 were resolved with Justice Department approval, and the total paid to resolve these claims was $34,282,097.

Of course, ADR is not the solution for every problem of delay and expense in litigation. Each ADR procedure itself has a cost, and the Department tries to reach balanced judgments about whether that cost is justified in specific cases. In making these judgments, the government is sometimes under constraints that would not apply to private litigants. For example, in resolving non-meritorious claims, private litigants might resort to ADR as a settlement opportunity to avoid the expense of litigation. The government, however, may find ADR unhelpful in that situation, because it lacks authority to pay money in settlement of non-meritorious claims. ADR thus may be wasteful in cases where principled disputes on legal issues make settlement unlikely. The government, as a frequent litigant, also resists frivolous claims, in order to discourage such claims in the future. Still, in many instances, we agree that ADR can save time and money in the resolution of disputes involving the government.

2. Case Tracking. The Committee recommends more substantial case management, including "tracking" of cases by level of complexity.[57] This notion, also recently raised in *Justice for All*,[58] suggests adoption of a three-level system of case assignment -- simple, complex and standard -- that will allow better management of the caseload and ensure that the relatively simple cases are disposed of as expeditiously as possible. We believe that such a case tracking system is a particularly promising administrative reform. We also believe that judges should be involved early in the management of complex cases to control both the timing and costs involved; Civil Rule 16 requires an early initial scheduling conference and judges should use that conference to establish firm timetables. Training judges in appropriate techniques of case management is often overlooked and we believe more can be done in this area.

JUDICIAL SALARIES

The Committee, recognizing that developments have overtaken its deliberations, simply acknowledges the recently-enacted pay increases for federal judges and seeks assurance that judicial pay will not fall behind again. As you know, President Bush asked Congress to enact a 25% increase in judicial salaries last April 12, and I have spoken out on this subject many times as well.[59] Congress has now responded by enacting H.R. 3660, the "Ethics Reform Act of 1989," which, in addition to a number of ethics reforms, provides a pay raise for judges of 7.9% effective February 1, 1990 and a further increase of 25% effective January 1, 1991 -- a cumulative increase of 35%. We sincerely hope that these pay adjustments will ease the financial burdens that have caused some in the judiciary to leave the bench.

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57. *Draft Report*, at 74.

58. Brookings Institution, *Justice for All: Reducing Costs and Delay in Civil Litigation* (1989).

59. *See also* Statement of Thomas M. Boyd, Director, Office of Policy Development, United States Department of Justice, before the Subcommittee on Courts, Intellectual Property, and the Administration of Justice, House Committee on the Judiciary, on H.R. 1620 and H.R. 1930, *The Judicial Discipline and Impeachment Reform Act* and *Salary Increases for Federal Judges*, 101st Cong., 1st Sess. (June 13, 1989).

JUDICIAL IMPACT

The Committee has made a number of suggestions dealing with the broad area of "judicial impact." For example, the Committee recommends creation of an Office of Judicial Impact Assessment within the Federal Judicial Center, which would advise Congress on the effects of proposed legislation on the courts and offer technical assistance.[60] Such an office would need to work closely with the Judicial Branch's legislative affairs office, and the Department of Justice as well. This recommendation should not overlook, however, the simple point that, to the extent that we can provide such advice, we do so today.

We believe that the Judiciary Committees must consider this information carefully and guide other committees in the proper drafting of statutory provisions affecting the Judiciary.[61] Toward this end, we agree that items to consider should include: (1) the appropriate statute of limitation; (2) whether a private cause of action is contemplated; (3) whether pre-emption of state law is intended; (4) the definition of key terms; (5) the *mens rea* requirement in criminal statutes; (6) severability; and (7) whether the new bill repeals or otherwise voids previous Federal legislation.[62]

CONCLUSION

Mr. Chairman, I know that I do not need to reassure you of our cooperation in the development of court reform proposals. Ed Dennis has brought many of the Department's concerns to the attention of the Committee. We will be pleased to continue to assist you in understanding the role of the Department and the interaction of the Department with the court system. If the Committee has any requests as you prepare your final recommendations, you need only voice them and we will attempt to respond.

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60. *Draft Report*, at 126.

61. A good example of the problems that face the Judiciary, and the Department of Justice, in this area can be found in Title IV of Pub. L. No. 98-620 (Nov. 1, 1984), eliminating over 90 separate provisions that required that particular classes of cases be expedited on the courts' dockets. These provisions developed over many years in disparate pieces of legislation until they collapsed of their own weight upon the courts. Congress should be wary of enacting special judicial review provisions.

62. *Draft Report*, at 136.

Prepared Statement of Stuart Gerson, Assistant Attorney General, Civil Division, Department of Justice, Before the House Committee on the Judiciary, Subcommittee on Courts, Intellectual Property, and the Administration of Justice

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Mr. Chairman and Members of the Subcommittee:

Given the great challenges that a litigious society continues to present to the administration of justice in the federal courts, it is a matter of importance to present the views of the Department of Justice and the Administration on H.R. 3898, the Civil Justice Reform Act (as revised) and H.R. 5381, the Federal Courts Study Committee Implementation Act of 1990. These two measures, along with the omnibus judgeship bill introduced by Chairman Brooks, H.R. 5316,. could result in substantially improving the rendering of effective and efficient justice for all Americans.

Because the Department of Justice and the Administration believe it imperative generally to enhance the judicial system, the bills called before the Subcommittee today are of special interest to us. The revised version of H.R. 3898 centers upon the need to provide efficiency in the management of the federal court caseload; H.R. 5381, in turn, focuses on the work and recommendations of the Federal Courts Study Committee.

In reviewing these legislative proposals, the Department enjoys the unique perepective of being, by far, the largest litigant in the federal courts. For example, the United States participated in 26.4% of the 223,113 cases filed in the United States district courts in calendar year 1989.

The Civil Division, which I head, handles more than 18,000 cases at any given time, and expends more than 700,000 attorney hours annually in defense of the United States. In the area of

mass torts litigation alone, the Division has, since 1981, expended 433,000 hours to defend 3,200 asbestos cases. Given budgetary and manpower realities, we could not have managed this type of complex litigation without having developed and adopted efficient managerial mechanisms and automated litigation support.

These facts illustrate the Department's realization that litigation under the present system indeed is intricate and often burdensome. We thus commend the efforts of this Subcommittee to streamline litigation in the federal courts.

As I describe the Department's views on these important pieces of legislation, and renew our commitment to working with the Judiciary and the Congress on judicial reform legislation, I must reiterate an important Administration policy. We are guided by a healthy respect for the Constitution's separation of powers. This respect leads us to refrain from commenting on a number of provisions in these bills that we regard as internal and native to the Judicial Branch. Thus, for example, § 202 of H.R. 5381 would provide a statutory recognition of the power of the Judicial Conference of the United States to issue rules and regulations for the federal judiciary. If the Judicial Conference believes that a statutory authorization is necessary for it to issue rules and regulations for the internal governance of the Judicial Branch, the Executive Branch would support it. However, it is not our mandate or desire to manage the Judicial Branch.

We similarly believe that it is unwise to impose detailed statutory controls on the internal operations of the Judicial Branch in the exercise of its constitutional authority. Congress, however, may wish to adopt measures that facilitate the exercise of that authority by extending to the courts additional tools or resources with which to improve the administration of justice.

I. CIVIL LITIGATION MANAGEMENT

Apparently, this Subcommittee is contemplating an amendment to H.R. 3898 that would conform it to the language recently adopted by the Senate Judiciary Committee in Title I of S. 2648. My comments therefore are directed to the revision.

Only six years ago, Congress repealed, as inherently unworkable, the maze of nearly 100 ad hoc statutory provisions directing the district courts to expedite various classes of cases on their civil dockets. See 28 U.S.C. § 1657. The instant bill seeks a more systematic method of expedition by requiring new planning mechanisms, providing greater emphasis on case administration and establishing new reporting requirements.

District Plans

The proposed amendments to the Judicial Code would direct each of the 94 district courts to appoint an advisory group to recommend improvements for the timely disposition of cases.[1]

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[1] If Congress enacts this amendment and each district court appoints an advisory group, we suggest that the United States (continued...)

Theee recommendatione would be adopted ee a plen ee outlined in § 472. In addition, the bill providee for uniform reporting of case aging, etandardized characterizatione of judicial actions, and litigation manegement training.

The Department favors thie centralized epproach to planning and guidance in the development of dietrict plane. We believe that the purely adminietretive dietrict plane envieioned by the current proposals could improve the dispoeition of civil cases without unnecessarily formalizing the civil litigation process.

The proliferation of inconsistent local court rulee ie a problem the judiciary and litigante have faced for years; even under current practice, counsel for the Department and other multi-district litigators, euch ae multi-etate bueineeeee, labor unione, end public intereet groupe, must frequently comply with many different and inharmonious rulee. Significantly different caee management plans would exacerbate thie problem.

We recognize thet eome tailoring of dietrict court operetions to eddreee local fectore ie neceeeary, and believe thet the current proposale allow flexibility for that. We note, however, that district-level plans adopted without an edequate degree of coordination and deference to the uniformity of the Federal Rules

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[1](...continued)
Attorney for that district be named a permanent member of the group.

of Civil Procedure themselves have been of limited success in dealing with litigation process problems.[2]

Differentiated Case Management

Proposed 28 U.S.C. § 473(a) would require that each district court develop a system of differentiated case management based upon the complexity of each case, its requisite preparation time, anticipated trial length and resource requirements. The Attorney General supports this concept now, as he did in his statement before the Federal Courts Study Committee last January.

We suggest that the courts already have the authority to develop and implement this tracking without legislation, though legislation might help to ensure uniformity. Rule 16 of the Federal Rules of Civil Procedure already requires judges to schedule early initial conferences to establish firm timetables. Rule 16 also gives the district courts the general power, through conferences and scheduling orders, to promote efficient use of the court's and the litigant's resources, and to address early on

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[2] In 1972, for example, the judiciary adopted Fed. R. Crim. Proc. 50(b), which required that each district court adopt a plan for the speedy disposition of criminal cases. See 18 U.S.C. § 3771. However, Rule 50(b) plans were inconsistent among districts and frequently inflexible within a district; only two years later did Congress intervene and enact the Speedy Trial Act of 1974, 18 U.S.C. § 3161. The extent of the Speedy Trial Act Amendments of 1979, Pub. L. No. 96-43, 93 Stat. 327, Aug. 2, 1979, clearly elucidates the difficulty of managing the judicial process by statute. On the other hand, 18 U.S.C. § 3006A mandates district plans for providing counsel to indigent defendants, and 28 U.S.C. § 1862 requires district plans for the management of the jury wheel. These successful administrative plans differ in both kind and degree from the current proposal because the current proposal reaches far beyond the administration of the district courts to the litigation process itself.

in litigation a wide range of matters bearing on the conduct of the case. That court power is reinforced by the power to sanction attorneys or parties who do not comply.

To ensure success, a case tracking plan must be carefully crafted to avoid being unnecessarily burdensome to litigants. Any such proposal particularly should take the government's litigation interests and resource limitations into account.[3]

While we believe that the tracking concept has merit, we are concerned that any such tracking system imposed on the federal courts not be legislated too narrowly or restrictively. Accordingly, we agree with the bill's purpose of ensuring that district courts consider and implement case tracking while leaving the details to be worked out by the individual judges.

Pretrial and Settlement Conferences

I would like to draw your attention to the fact that several sections of the bill would direct the district courts to consider implementation of actions that may conflict with the Attorney General's authority to manage and administer the legal affairs of the United States. See 28 U.S.C. §§ 516-519. The Attorney General has delegated, through the offices of the United States

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[3] The Civil Division's Commercial Litigation Branch has had illustrative experience in this area. The Commercial Litigation Branch expends a great deal of time filing motions in individual cases in order to obtain exceptions from various aspects of the procedures set forth in the Claims Court case management plan because those procedures simply are not effective in specific cases. Various procedures appear to be inappropriate in different kinds of cases. This would occur even under the more specifically-tailored plans that would be required under the proposed legislation.

Attorneys and the Assistant Attorneys General, specific and limited authorization to proceed with the prosecution and defense of the interests of the United States.[4]

In particular, proposed § 473(b)(2) and (b)(3) direct the district courts to consider requiring that an attorney representing a party have authority to bind that party regarding all matters previously identified by the court for discussion at the conference and all reasonably related matters. Such a mandate, as applied to the United States, could conflict with the Department's chain of command and policy-implementation functions -- essential tools in managing some 60,000 cases filed each year.

A pretrial conference on discovery could raise issues of attorney-client or executive privilege, matters frequently requiring decisions by the highest officials of the Department, after consultation with the affected agencies. It would make little operative sense to require the United States to have senior officials present whenever a court deals with such matters. The United States should be exempted from the possibility of imposition of a requirement inconsistent with the Department's need to maintain centralized control over litigation.

Similarly, subsection (b)(5) directs the district courts to consider requiring that an attorney representing a party attend a settlement conference with full authority to settle the case. In

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[4]See, e.g., 28 C.F.R. § 0.13 (delegation of authority to designate attorneys to appear; authorization of redelegation).

order to retain necessary litigation control to protect the public fisc, the Department necessarily reserves settlement authority to senior officials and does not delegate such authority broadly to its more than 6,000 trial counsel. See 28 C.F.R. §§ 0.160-0.169.[5] The Department makes every effort to participate in settlement negotiations, but cannot realistically send officials with full settlement authority to each settlement conference.

The government may not settle a case unless the United States' liability and the amount of damages have been clearly identified. Furthermore, payment must be properly authorized. The Department of Justice has been most successful in representing the taxpayer in this regard.

As the Attorney General noted in testimony before the full Committee last Spring, during 1989 we defeated over $21 billion in claims against the United States. In contrast, the United States paid out only $123 million in claims -- less then six-tenths of one percent of the amount sought by plaintiffs against the United States. On the affirmative side, the government in

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[5] The Attorney General has authorized the Deputy Attorney General to exercise his authority to settle all claims against the United States. 28 C.F.R. § 0.161(b). Assistant Attorneys General have been authorized to settle or close those claims which do not exceed $750,000, with limitations. §§ 0.160, 0.164. In addition, we have redelegated certain settlement authority pursuant to § 0.168. For example, in cases under the jurisdiction of the Civil Division, the United States Attorneys and Branch Directors are authorized to settle claims up to $200,000, while the Environment and Natural Resources Division redelegates settlement authority ranging from $100,000 to $300,000, depending upon the type of claim.

1989 secured judgments and settlements of $521 million. Maintaining proper control over such wide-ranging litigation involving vast sums requires a degree of centralized control quite inconsistent with the delegation of full settlement authority to trial counsel.

Accordingly, while the district courts may wish to consider generally requiring that attorneys appear for settlement conferences with the full authority to settle the case in some kinds of litigation, that requirement cannot be applied generally to cases involving claims by or against the United States. The Senate Judiciary Committee recognized this problem in its report on S. 2648 and stated its intention not to upset this delicate balance. We believe that specific exceptions should be made in the text of the bill to ensure that the litigation prerogatives of the United States and the public fisc itself are adequately protected.

II. FEDERAL COURTS STUDY COMMITTEE IMPLEMENTATION ACT

H.R. 5381 carries forward a number of proposals recommended by the Federal Courts Study Committee. My colleague, Edward S. G. Dennis, Jr., formerly the Assistant Attorney General for the Criminal Division, served on the Study Committee with you, Mr. Chairman, and Congressman Moorhead, and many offices of the Department assisted in the preparation of materials for the Committee's consideration. In addition, the Attorney General testified before the Study Committee on January 31, 1990. Let me

again commend the accomplishments of the Study Committee and of this Subcommittee for its responsiveness in developing this important legislation. I address today those proposals in H.R. 5381 that directly affect the Administration.

Civil Process Changes

Removal. We must oppose § 110, which would alter the removal statute, 28 U.S.C. § 1441(c). Currently, where multiple independent claims are brought in state court, the statute allows the entire case to be removed to federal court if there exists a separate claim "removable if sued upon alone." The proposed change replaces this phrase to allow removal only if there exists a claim "within the jurisdiction conferred by section 1331 of this title." This change would prevent removal in those cases where the federal claim is not based on the "federal question" statute, 28 U.S.C. § 1331, but on some other federal jurisdictional statute such as the Federal Tort Claims Act, 28 U.S.C. § 2679(d)(2), or the "Little Tucker Act", 28 U.S.C. § 1346(a)(2). We see no reason why removal is not appropriate in such cases.

We also oppose that part of § 110 that would alter current 28 U.S.C. § 1441(c), which allows the district court (if a removable claim exists) either to decide the non-removable claims or to remand all matters "not otherwise within its original jurisdiction." The proposed change would allow the district court to remand all claims "in which the State law predominates."

This could allow a plaintiff, in a suit against the United States, to argue that a claim otherwise within the federal

district court's jurisdiction should be remanded because, under the analysis in United States v. Kimbell Foods, Inc., 440 U.S. 716 (1979), or a similar doctrine, state law "predominates" in that particular case. While we would oppose such a reading of the statute in any given litigation, the proposed language virtually invites a district court to adopt such an argument and would, at the least, cause confusion and unnecessary litigation.

Venue. We oppose § 111, which would change the venue requirements in 28 U.S.C. § 1391(e) from allowing an action against the United States to be brought where a "cause of action arose" or "the property is situated" to where "a substantial part of the events or omissions giving rise to the claim occurred" or a "substantial part of the property is located." The present statutory language seems as clear and precise as is possible in determining venue questions. The proposed language does not appear to clarify material venue interests, but well might generate litigation over the "substantiality" of the "events or omissions" or the property involved.

Moreover, the language seems likely to lead to forum shopping as inventive counsel try to frame novel definitions of "substantial." We see no benefit to the proposed change but envision a likelihood of further confusion and litigation in this area.

Statute of Limitations. Section 112 would provide a statute of limitations for all federal statutes that do not already

contain such a proviaion. We support thia proposal as it applies to private cause of actions.

Section 112, as drafted, ia limited to legislation that is enacted after the date of enactment of this proposal. Accordingly, § 112 would not apply to the many extant laws that contain no statute of limitations. This diecontinuity should be removed and the proposed residual statute of limitatione should be applied to all congressional enactmente that do not contain such a provision -- subject to an exclusion for the United States which we shall discuss. This simple change would save the federal courts a aubetantial amount of time and provide certainty in a wide range of caaes where the appropriate atatute of limitations is now litigated.

As with the issue of settlement authority, the United States would auffer if thie proviaion were applied to the causes of action that it puraues. This proviaion could supplant the already existing etatutes of limitation applicable to casee involving the United Statee with reapect to any atatute not containing its own statute of limitations.[6]

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[6] Sec. 112 sets out a statute of limitation that would apply "[e]xcept as otherwise provided by law." Many of the etatutes of limitation that now apply to the United States also apply "except as otherwise provided by Congress." See, e.g., 28 U.S.C. §§ 2415, 2416, 2462. At a minimum, this would engender needleas litigation over which statute of limitation would control. An additional problem of interpretation would result from comparing this provision to 28 U.S.C. 2415(c), which provides that "Nothing herein shall be deemed to limit the time for [the United States to bring] an action to eetablish the title to, or right of possesaion of, real or pereonal property." Because subsection 2415(c) does not affirmatively etate that no

(continued...)

Furthermore, there are certain types of actions for which there is currently no limitations period applicable to the government and for which no statute of limitation is appropriate. For example, there is no limitations period applicable to abatement actions under § 106 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9606.

The government's ability to clean up sites presenting an imminent and substantial endangerment to the public health or welfare should not be curtailed by litigation over whether the cause of action arose when the release of a hazardous substance occurred, when it was discovered, or when the endangerment was determined. Nor should such actions be barred because a dangerous condition may have been in existence more than four years before the action was filed.

Magistrates. Section 119 would permit United States district judges and magistrates to advise the parties before them of the availability of magistrates to resolve disputes. We believe that present procedures, which direct the clerk of the district court to inform the parties of the availability of a magistrate to hear their case, are adequate. See 28 U.S.C. § 636(c)(1).

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[6](...continued)
statute of limitation is applicable, although that may have been the intention of Congress, this provision would probably be interpreted to create a statute of limitation for such actions where none previously existed.

The Department agrees with the legislative history of 28 U.S.C. § 636 setting forth that judges and magistrates themselves should not be involved in advising parties of the availability of a magistrate. 28 U.S.C. § 636(c)(2). Such suggestions from judicial officers have the inherent tendency to coerce.

The 1978 Act made substantial changes in the scope of a magistrate's delegable duties. The Act's referral process has worked and many cases have been resolved quickly and fairly by the magistrates with the consent of the parties. In the reporting year ending June 30, 1989, United States magistrates tried 5,354 cases by consent, and handled thousands of pretrial conferences and motions, and numerous criminal proceedings.[7] We participate in many such cases and consent often to disposition before a magistrate.

We do not believe that a magistrate's authority should be further expanded. The magistrate is an adjunct of the court and should not supplant the court through an award of independent authority. The changes envisioned by § 207 of the bill, providing contingent authority for new magistrates, including the power to hold parties in civil and criminal contempt, should be more fully considered before enactment. Also, we do not support the proposal in § 206 to change the title of "Magistrate" to "Assistant United States District Judge." Therefore, we recommend that both provisions be deleted from the present bill.

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[7] Annual Report of the Director of the Administrative Office of the United States Courts, 1989, Tables M-1 through M-5.

Supplemental Jurisdiction. Section 120 would invest the district courts with supplemental jurisdiction to hear all matters related to a case, whether independent federal jurisdiction exists over those related matters or not. We oppose this proposal because it would seem further to increase the burden of issues presented to the federal courts, which would seem the opposite of the Subcommittee's intent. Furthermore, such an expansion of pendant jurisdiction unjustifiably would permit plaintiffs to use limited jurisdictional grounds such as the Federal Tort Claims Act to bring private suits into federal court that otherwise could be maintained only in state courts.

Alternative Dispute Resolution. Section 121 would provide for a nationwide expansion of the use of voluntary alternative disputs resolution (ADR) by the federal courts. While the Department of Justice firmly supports the use of ADR in appropriate circumstances,[8] we recognize that Congress has proceeded cautiously in this area and for these reasons object to the proposal as currently drafted.

It was only two years ago that Congress expanded the authorization for court-annexed arbitration pilot programs from 10 to 20 districts -- an appropriate step in expanding experimental programs. That new authority, which has not yet been implemented, also provides guidelines and standards to ensure a measure of uniformity across different districts, a factor which is lacking in § 121. We believe that Congress should continue to

[8] 28 C.F.R. § 50.20.

proceed cautiously and permit experimentation without altering the entire system of civil justice on a nation-wide scale.

Witness and Juror Fees. Section 108 would increase witness and juror fees from $30 per day to $40 per day. The fee amount has not been changed in many years. We believe that this change is appropriate.

Bankruptcy Proceedings

The United States participates in a large number of complex bankruptcy proceedings. The Civil Division, which routinely retains cases involving in excess of $200,000, received over 8,000 cases -- over 50 cases per week -- in FYs 87-89 alone, with a total dollar value in excess of $5 billion. Claims for less than $200,000 are routinely handled by the United States Attorneys.

The Tax Division's bankruptcy caseload exceeded 12,000 cases in FY 89 -- over 230 per week -- and that Division is budgeting for over 16,000 cases -- over 300 per week -- for the coming fiscal year. The Environment and Natural Resources Division now handles in excess of 100 cases which cumulatively involve hundreds of millions of dollars in clean-up liabilities. As previously noted, in most of these cases, settlement authority is retained by senior Departmental officials.

Consent. Given the complexities of bankruptcy litigation and the varied federal interests involved, several provisions of H.R. 5381 would cause significant difficulties for the Department. For example, § 114 of the bill would provide that a party

shall be deemed to consent to proceeding before a bankruptcy judge unless an objection is filed within 30 days of the date on which the party files its first pleading or 30 days after service of the pleading that initiates such proceeding, whichever occurs first.

In many cases, the Department is most willing to consent to proceeding before a bankruptcy judge, but we simply cannot evaluate all of the many facets of each proceeding and coordinate the many different agencies that might be involved within such a limited time frame. The Department would be hard pressed in most cases to do more than file a boilerplate objection to such referrals until the necessary evaluation has been completed. This would also mean a separate filing in most cases because the Bankruptcy Rules allow the Government 35 days to answer a complaint.

Moreover, aside from the Government's practical problems, an implied waiver of the right to an Article III tribunal raises possible constitutional concerns. By analogy, trials before the non-Article III magistrates require express consent, and the rules of court must include procedures to insure the voluntariness of that consent. Currently, Bankruptcy Rule 7012(b) requires a statement that the party does or does not consent to entry of final orders or judgment by the bankruptcy judge, and we believe that this requirement should be retained.

Bankruptcy Appellate Panels. Like the magistrates, bankruptcy judges are adjuncts of the district courts, but unlike

magistrates, bankruptcy judges historically have been viewed as "specialists." Section 115 of H.R. 5381 would further that perception by permitting two or more circuits to establish joint bankruptcy appellate panels with the approval of the Judicial Conference. Our experience suggests that bankruptcy appeals should not be ceded to a group of specialist judges when bankruptcy law is merely one part of the broad fabric of the law and the outcome of bankruptcy cases depends on the full range of statutory and common law principles. Rather than further isolate bankruptcy from the general fabric of the law, we believe that Article III judges should pay closer attention to bankruptcy proceedings. In short, the restructuring of the bankruptcy courts after Northern Pipeline Construction Co. v. Marathon Pipe Line Co., 458 U.S. 50 (1982), should not be disturbed.

Bankruptcy Appeals. We support § 116 of the bill because it properly limits review of certain bankruptcy determinations to appeal at the district court level, thus striking a balance between concerns of judicial economy and the requirement of Article III judiciary supervision of the bankruptcy court.

Bankruptcy Administrator Program. Finally, § 118 would extend for an additional 10 years, and broaden the authority of, the few remaining bankruptcy administrator programs in the judicial districts of North Carolina and Alabama. The Department strongly urges the Subcommittee to delete these provisions and to allow the United States Trustee program to become nationwide as originally planned in 1986.

Under the Bankruptcy Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986, Pub. L. No. 99-554, Congress expanded the United States Trustee Program as a permanent part of the Department of Justice. Under the transition provisions of the law, judicial districts were placed under the United States Trustee Program at varying stages. The final judicial districts, those in North Carolina and Alabama, are scheduled to come into the Program in 1992.

The administration of cases involves the appointment and oversight of trustees and debtors under the Bankruptcy Code, duties which are presently performed by the United States Trustee in 88 judicial districts throughout the country. In contrast, until 1992, the judiciary will continue to carry out these administrative functions in the judicial districts in North Carolina and Alabama.

The 1986 Act represents Congress' emphatic determination that, in bankruptcy matters, the proper role of the judiciary be limited to resolving disputes, not to administering cases. Specifically, the bankruptcy system should not allow trustees and examiners to be appointed by the same branch of government that adjudicates disputes involving those individuals, and that approve their compensation. In sum, there should be one system of administering bankruptcy cases and that should be under the United States Trustee Program.

Extension of the Parole Commission

Section 109 of the bill would extend the life of the United States Parole Commission by merely changing the statutory termination date. It thus defers the question of the ultimate termination of the Parole Commission. We do not support this approach.

The Parole Commission now is scheduled to terminate on November 1, 1993. At that time, approximately 18,000 to 20,000 parole-eligible prisoners will be in the federal prison system and parole hearings will need to be held for them; some parole hearings will need to be held long after the end of the five-year extension envisioned by § 109.

The Administration has proposed that the Parole Commission be replaced by a separate board for the interim five years between 1992 and 1997, and that authority for review of the small number of remaining cases be lodged within the Department after that date. This would guarantee that parole decisions can be made as long as necessary in the future, while also ensuring that the declining number of cases does not drain public fisc resources through the continuation of a separate entity. We shall provide the Subcommittee with a copy of the Administration's proposal and propose that it be substituted for current § 109.

The Court of International Trade

Section 205 of the bill would alter the process of designation of the Chief Judge of the Court of International Trade. In the Customs Court Act of 1980, Congress carefully crafted the

structure of the Court of International Trade. Two years later, a similar process in the Federal Courts Improvements Act created the Federal Circuit and the Claims Court. In both instances, Congress recognized the special nature of these courts. The designation of the chief judges was but one aspect of a balancing of complex relationships. We believe that these courts are working effectively as Congress intended and that no change should be made in the statute.

III. ADDITIONAL JUDGESHIPS

Before closing, Mr. Chairman, I would also like to reiterate the Administration's view on a subject that is of great concern to all of us: the need for additional judgeships. As the Subcommittee is aware, on June 22, the Judicial Conference recommended creating a total of 96 additional judgeships in light of 1989 caseload figures.

We support the Judicial Conference's recommendation that Congress create 76 new district court judgeships. We recognize also an interest in targeting additional judgeships in areas of most pressing need and greatest projected growth. The Judicial Conference recommendations, however, are predicated on past filings, and do not respond to planned caseload adjustments predicated on governmental policy.

The Department is making substantial commitments of recently-authorized resources for the prosecution of drug trafficking, money laundering and related cases. Similarly, we are vigorously

pursuing criminal and civil fraud, tax and bankruptcy cases relating to the failures of a multitude of savings-and-loans and other financial institutions.

As you know, a bill introduced by Chairman Brooks, H.R. 5316, which is pending before the full Committee, would authorize 45 additional district judgeships. We believe that these numbers should be evaluated for adjustment in light of the most recent Judicial Conference request.

The Judicial Conference has also requested 20 additional judgeships for the courts of appeals, while H.R. 5316 would authorize nine. We recommend that H.R. 5316 be amended at least to bring it into conformity with the most-recent recommendation of the Judicial Conference.

We note, though, that the Department's initiatives, many of which are employing new statutory provisions, will raise complex and manifold appeals because of the novelty of the issues involved, the lack of precedent in interpreting new statutes and factual situations and the substantial amounts of money and prison sentences involved. Moreover, a distinct need has been identified for a more comprehensive method for determining the needs of the courts of appeal for additional judgeships, including the development of a weighted caseload formula.[9]

Accordingly, we also believe that, to respond to the needs we have just identified, that one additional judgeship should be

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[9] Report of the Federal Courts Study Committee (April 2, 1990) at 111.

authorized in the Ninth Circuit, at least one additional judgeship should be authorized for the Fifth Circuit, and at least one additional judgeship should be authorized for the Eleventh Circuit. In reaching this end, as we are always, the Department is fundamentally committed to working with this Subcommittee to assure that the vital interests of the citizens of the United States in having a capable and responsive federal court system are met.

CONCLUSION

As a litigator with a continuing experience of 23 years in the federal courts, I believe that effective case management must originate with the district judges themselves. It is, of course, not the role of judges to make the law; their job is to apply the law that this Congress passes. But to apply it, they must manage their dockets effectively.

I suggest that there are judges who simply let things happen and those who make things happen. We must encourage the latter. As overloaded as our dockets are presently, a large majority of cases still settle. The effective judge, through use of active case management and timely decisions on motions, including those for summary judgment, can encourage the parties to evaluate their positions with an eye towards realistic, voluntary resolution of the matter before the court. The judge who follows this prescription has the resultant freedom to try the case that must be tried, and generally is the judge who has his or her docket

currsnt and parties who ars satisfied with the results produced. Congress can most hslp this procsss by giving the judgss ths tools to sffectively manags thsir dockets and by providing them with adsquats rssourcss.

Finally, I nots that ths naturs of this sort of tsstimony has rssulted in ths fact that many of my comments havs bsen negativs or cautionary. I thus want to conclude by reiterating ths Departmsnt's gsneral support of ths thrust of thsss proposed pisces of lsgislation and our strong commitmsnt to continuing to work with this Subcommittss.

STUART GERSON, ASSISTANT ATTORNEY GENERAL, CIVIL DIVISION, DEPARTMENT OF JUSTICE, RESPONSES TO QUESTIONS SUBMITTED BY THE COMMITTEE ON THE JUDICIARY FOR THE DEPARTMENT OF JUSTICE

II. QUESTIONS FOR THE DEPARTMENT OF JUSTICE

General:

QUESTION 1: The Attorney General recently informed the Committee of Justice's plans to develop and implement a new Department-wide case management system. Will companies who have commercially available case management systems already in the marketplace (such as INSLAW, Inc.) be allowed to compete on this procurement?

ANSWER: We are presently conducting a comprehensive study of the Department's case management needs. When this study is completed, we will develop a request for proposals for any case management system that it recommends that we decide to acquire. It is impossible at this stage to predict what specifications will be included, but any company (including INSLAW) will be able to bid. We can assure you that the Department fully supports the principle of full and open competition, and we will not deliberately define our needs in order to eliminate any potential vendors.

QUESTION 2: What is the rationale for placing the Competition Advocate under the Office of the Procurement Executive? Doesn't this place the Competition Advocate in an untenable position of having to criticize or object to procurements already approved or supported by his or her superior (procurement executive)?

ANSWER: The Procurement Executive is responsible for management direction of the procurement system of the Department. As part of his statutory functions, the Procurement Executive must give management direction to ensure, among other things, that full and open competition is achieved generally in the agency's procurements. More specifically, the Procurement Executive is required to approve in advance certain procurements that are accomplished with less than full and open competition. In the Department of Justice, the Procurement Executive is also responsible for preaward review and approval of all procurements that meet certain monetary thresholds. Approval of proposed procurements is withheld if adequate competition has not been obtained, although this is not the only axis of our Procurement Executive's review. These independent review and management functions of the Procurement Executive are similar to the functions of the Competition Advocate. Both officials have responsibility for promotion of full and open competition in agency procurements. There is nothing inconsistent in the roles of these two officials with respect to competition; in fact, they complement one another. The Department originally placed its Competition Advocate in the office of the Procurement Executive, but separated the offices to accommodate personnel requests. During the period of separation, the Department experienced problems in coordination of these related functions, and the Competition Advocate suffered from the loss of staff support available in the larger and more diverse office of the Procurement Executive.

QUESTION 3: Under current procedures, the Department allows the delegation of small purchase procurements to the individual U.S. Attorneys offices. The Committee has been informed that the individual U.S. Attorneys offices used this authority to purchase hundreds of personal computers, printers, and software off the General Services Administration Schedule even though the GSA schedule is not the most economical way to purchase large quantities. Why weren't these purchases combined into a single procurement conducted using full and open competition?

ANSWER: In October 1988, the United States Attorneys' offices throughout the country were using nine different kinds of word processing equipment. These word processing systems were, for the most part, incompatible with each other and many of the systems had also outlived their useful life. In order to replace this equipment, the Department developed specifications for a consolidated procurement to purchase personal computers, printers and software. To reduce the procurement time, the competitive procurement mechanism chosen was an Invitation For Bids.

In November 1988, we began work on a solicitation for a fully competitive contract for up to 3,000 personal computers, associated software and up to 1,500 laser printers. This computer equipment was to replace aging and obsolete systems in the U.S. Attorneys Offices (USAOs) pending award of the departmental Project Eagle office automation contract. In February 1989, the Department issued an Invitation for Bids for the computer equipment. Approximately 40 bids were received in April, 1989, and a contract was awarded at the end of May, 1989.

As the procurement process proceeded, it was evident that the existing word processing equipment was not going to last until the contract was awarded. In fact, the equipment was breaking down at an alarming rate causing unacceptable disruptions in service. As a result, many of the U.S. Attorneys' Offices requested equipment to replace their word processors with PCs. Without a consolidated contract, these offices were provided funding to use their Delegation of Procurement authority to purchase the equipment until a consolidated contract (the Invitation for Bids or the Project EAGLE contract) with full and open competition was awarded.

The Department combined large quantities of this equipment and awarded a fully competitive contract for up to 3,000 personal computers and 1,500 laser printers for the U.S. Attorneys Offices (USAOs). Accordingly, several hundred personal computers and laser printers were, indeed, individually ordered off GSA Schedule by USAOs during the conduct of this competitive procurement.

At the beginning of August 1989, we ordered that the placement of GSA Schedule orders be stopped. To our knowledge, following this notification, all subsequent orders for personal computer systems were placed under the competitively awarded contract.

QUESTION 4: How many investigations conducted by the Inspector General have resulted in criminal prosecutions, civil suits or administrative actions in Fiscal Years 1991 and 1992? Please provide the total number for each category and specifically list by name all cases that have been successfully concluded during Fiscal Years 1991 and 1992.

ANSWER: The following numbers of cases were accepted for criminal prosecution, civil suits, and administrative actions thus far in FY 91:

Criminal Prosecutions : 63

Civil Suits : 1

Administrative Actions: 210

The cases listed below were successfully closed during this fiscal year:

CRIMINAL CASES

1.	019-NOG-89	Non DOJ employee
2.	766-SND-88	Non DOJ employee
3.	002-LOS-90	Special Agent INS
4.	031-WRO-90	INS Clerk
5.	026-CAL-90	Non DOJ employee
6.	018-NOG-90	Non DOJ employee
7.	034-NOG-90	Non DOJ employee
8.	018-LOS-90	Immigration Inspector
9.	026-LOS-90	Immigration Inspector
10.	061-XLB-90	Chief, Legalization Officer (INS)
11.	9100037	BOP Accountant
12.	9100135	Non DOJ employee
13.	9100598	Non DOJ employee
14.	050-LOS-90	Special Agent (INS)
15.	9100089	Non DOJ employee
16.	9100972	Immigration Inspector
17.	9100304	Immigration Inspector
18.	059-ELC-89	Mechanic (INS)
19.	027-XDE-89	Non DOJ employee
20.	051-ATL-P9	Correctional Officer (BOP)
21.	119-COW-90	Computer Specialist (INS)
22.	053-TDG-PO	Correctional Officer (BOP)
23.	116-WDC-MO	Attorney - U.S. Marshals Service
24.	126-MEM-PO	Correctional Officer
25.	064-NYC-90	Clerk Typist (INS)
26.	021-NYC-89	Immigration Inspector
27.	109-NYC-88	Non DOJ employee
28.	075-CHA-87	Immigration Inspector
29.	024-CHA-90	Special Agent (INS)
30.	005-NYC-90	Immigration Inspector
31.	017-HAR-90	Clerk (INS)
32.	020-NEW-90	Non DOJ employee

33.	044-SAJ-90	Non DOJ employee
34.	045-NYC-90	Clerk (INS)
35.	9100894	Correctional Officer (BOP)
36.	114-XPT-88	Legalization Officer (INS)
37.	125-XPT-88	Non DOJ employee
38.	107-NYC-89	Immigration Inspector
39.	118-NYC-89	Senior Special Agent (INS)
40.	112-NYC-90	Immigration Inspector
41.	019-XPT-90	Legalization Officer (INS)
42.	027-NYC-90	Detention Enforcement Officer (INS)
43.	060-NYC-90	Detention Enforcement Officer (INS)
44.	072-NYC-90	Detention Enforcement Officer (INS)
45.	073-NYC-90	Detention Enforcement Officer (INS)
46.	9100020	Immigration Examiner (INS)
47.	9001650	Clerk (U.S. Trustees)
48.	9100953	Non DOJ employee
49.	9100569	Non DOJ employee
50.	062-ELP-90	Non DOJ employee
51.	018-ELP-90	Non DOJ employee
52.	292-ELP-86	Non DOJ employee
53.	9101062	Non DOJ employee
54.	049-BRO-90	Non DOJ employee
55.	021-LRT-90	U.S. Border Patrol Agent
56.	EOP-O-141P	Corrections Officer (BOP)
57.	EOP-O-55P	Corrections Officer (BOP)

ADMINISTRATIVE CASES

1.	NOP-OP-98	27.	SER-90-084	
2.	011-PHI-90	28.	9001345 (LDN)	
3.	9100030	29.	SER-90-039	BOP
4.	NOP-OP-30	30.	SER-90-141	BOP
5.	NOP-OP-118	31.	SER-90-055	BOP
6.	023-PIT-MO	32.	SER-90-161	BOP
7.	NOP-O-116	33.	SER-89-012	BOP
8.	9100714	34.	SER-90-140	BOP
9.	NOP-OP-101	35.	9100207	BOP
10.	NOP-OP-94	36.	9001445	BOP
11.	9100671	37.	SER-90-056	BOP
12.	9100891	38.	SER-90-060	BOP
13.	9100713	39.	9100513	BOP
14.	NOP-OM-83	40.	9100548	BOP
15.	NOP-OP-93	41.	9001599	BOP
16.	128-SAJ-88	42.	SER-90-104	BOP
17.	9100476	43.	SER-90-010	BOP
18.	9100708	44.	SER-90-162	BOP
19.	001-BOS-90	45.	FOP-O-49	BOP
20.	NOP-OP-104	46.	018-WDC-90	INS
21.	NOP-OP-96	47.	SER-90-010	BOP
22.	NOP-OP-78	48.	008-RIT-90	INS
23.	116-PHI-90	49.	037-ATL-90	INS
24.	9100634	50.	066-MIA-216P	BOP
25.	079-XPT-88	51.	012-COW-90	INS
26.	9100500 (INS)	52.	132-ARL-90	INS

53.	132-ARL-90	INS
54.	9100603	INS
55.	9100565	BOP
56.	010-WDC-90	JMD
57.	462-MIA-88	INS
58.	014-BLW-90	
59.	026-SHR-PO	
60.	241-CHI-88	
61.	SBO-O-15	
62.	SBO-O-62	
63.	SBO-O-68	
64.	SBO-O-69	
65.	SBO-O-76	
66.	SBO-O-81	
67.	SBO-O-83	
68.	SBO-O-92	
69.	SBO-O-103	
70.	SBO-O-106	
71.	SBO-O-108	
72.	SBO-O-110	
73.	SBO-O-126	
74.	SBO-O-129	
75.	SBO-O-130	
76.	SBO-O-131	
77.	SBO-O-145	
78.	9100351	
79.	9100588	
80.	9100650	
81.	018-PHO-89	
82.	071-SYS-90	
83.	006-TUC-PO	
84.	073-TEM-90	
85.	014-SND-MO	
86.	021-HHW-89	
87.	037-XSA-89	
88.	9101423	
89.	741-TUC-88	
90.	036-FCT-PO	
91.	800-WRO-88	
92.	054-OTM-90	
93.	9100590	
94.	835-XHO-88	
95.	028-CAL-90	
96.	073-MDC-PO	
97.	9100605	
98.	9101018	
99.	061-AND-90	
100.	057-SYS-90	
101.	041-XSR-90	
102.	W-90-86P	
103.	W-90-123P	
104.	W-90-169P	
105.	W-90-77	
106.	W-90-138	
107.	9100151	
108.	9100125	
109.	W-90-4	
110	W-90-46	
111.	9100128	
112.	W-90-154P	
113.	9100372	
114.	W-90-195P	
115.	W-90-228P	
116.	W-90-104	
117.	W-90-120	
118.	W-90-177	
119.	W-90-100P	
120.	W-90-190	
121.	W-90-194P	
122.	W-90-191M	
123.	W-90-202P	
124.	9100750	
125.	9100839	
126.	W-90-232P	
127.	W-90-209P	
128.	9101005	
129.	9101045	
130.	9101060	
131.	9101143	
132.	9101145	
133.	9101147	
134.	9101192	
135.	9101216	
136.	9101297	
137.	9101329	
138.	9101338	
139.	9101351	
140.	9101360	
141.	9101364	
142.	9101416	
143.	9101434	
144.	9101535	
145.	9101536	
146.	9100454	
147.	050-BRY-PO	
148.	077-DAL-90	
149.	389-XDA-88	
150.	061-ELP-90	
151.	292-ELP-86	
152.	025-HOU-90	
153.	356-HOU-88	
154.	006-PIC-89	
155.	048-EPT-90	
156.	022-EPT-89	
157.	W-90-216P	
158.	W-90-155P	
159.	007-HOU-90	
160.	036-APT-89	

161. 345-EPT-88
162. 027-YST-90
163. 064-FLF-90
164. 9100052
165. 9100319
166. EOP-O-184
167. EOP-O-157
168. EOP-O-158
169. EOP-O-59P
170. 9100218
171. 9100235
172. 9100258
173. 9100318
174. 9100528
175. 9100806
176. EOP-O-161
177. EOP-O-179
178. EOP-O-48
179. EOP-O-166P
180. EOP-O-92P
181. 9100858
182. EOP-O-176
183. 9100188
184. 9100416
185. 9100325
186. MOP-O-77
187. 9100018
188. 9100392
189. 9100578
190. MOP-O-72
191. MOP-O-73
192. MOP-O-75
193. MOP-1-005
194. EPI-O-196P
195. MOP-O-59
196. MOP-O-64
197. MOP-O-66
198. MOP-O-80
199. 9100449
200. EPI-O-185
201. EPI-O-186
202. EPI-187
203. EPI-O-195
204. EPI-O-103
205. EPI-O-151P
206. EPI-O-178
207. EPI-O-182P
208. MIG-O-89
209. MIG-O-76

QUESTION 5: In the Attorney General's annual competition advocacy report to Congress, he reported that the Department would utilize automation to enhance the management review and control of competition and competition savings. How has automation been utilized to improve the acquisition process in the Department?

ANSWER: Automation efforts continue in the Department's acquisition functions to the extent practicable. All Bureau Headquarters offices have installed automated tracking systems which allow for faster and better review of individual acquisitions. The Department maintains a central automated contract file in the Office of the Procurement Executive for review and reporting purposes on all acquisitions exceeding $25,000.

QUESTION 6: The Competition in Contracting Act requires that the Competition Advocate have qualified resources available to him or her to perform the duties of the office. What full-time resources have been assigned to the Competition Advocate? What is the total budget for that office?

ANSWER: As described in the answer to question 2, the Department has recently moved the Office of the Competition Advocate to the Office of the Procurement Executive. This move was accomplished, in part, to improve the availability of staff resources for the Competition Advocate by making the position part of a larger and more diverse procurement policy office. Prior to this move, the permanent staff of the Competition Advocate consisted of the advocate herself and one assistant who performed tasks of a clerical and administrative nature. Beyond that, the Competition Advocate requested and received professional staff from Department components for specific projects or audits, and she relied on a forum of competition advocates from Departmental components for assistance in conducting the regular tasks of the office. While we expect to make the necessary resources available to the Competition Advocate in the same ways in the future, we also anticipate greater staffing flexibility now that the advocacy function is part of a larger procurement policy office. The budget for the Competition Advocate and assistant in 1991 is approximately $100,000.

Financial Institutions Enforcement and Investigations:

QUESTION 7: The General Accounting Office has reviewed 90 banks subject to the Federal Deposit Insurance Corporation's regulation that failed between 1986 and June 1990. The GAO has asked the FBI which banks have been the subject of FBI investigation and the results of those investigations. The FBI, however, has refused to cooperate with the GAO. Please provide the number of closed bank investigations from this list; the number of pending bank investigations from this list; and details on bank investigations that have resulted in indictments.

ANSWER: We believe it is inaccurate to say that the FBI has "refused" to cooperate with GAO in this request for information. In fact, the FBI has attempted to cooperate as fully as possible with numerous, and in some cases, voluminous GAO requests for information, consistent with the availability of the information in the FBI's records system and the manpower necessary to retrieve the data requested.

The information requested by GAO in this instance was requested by letter dated March 22, 1991, which set a deadline for receipt of the information at GAO by March 29, 1991. GAO requested information on criminal referrals received by the FBI in financial institution fraud and failure matters since 1986, which are not maintained at FBI Headquarters. The FBI currently receives approximately 1,200 to 2,200 criminal referrals a month. GAO was advised, both orally and by letter, that all of the information requested by GAO was not routinely collected by the FBI, nor was the information maintained in a single or centrally located data base. GAO was advised that, because of the lack of identifying information provided in their request, the FBI would have to

manually review in excess of 45,000 files nationwide to attempt to provide the information requested. This review would necessitate a very substantial FBI resource commitment of both Agent and support personnel and divert them from ongoing financial institution fraud and failure investigations in FBI field offices.

In discussions with the Assistant Director of GAO supervising this project, it was agreed that the diversion of substantial FBI resources to develop data that the FBI does not routinely collect or centrally file was not intended. We are working with GAO on this request to provide what data we can, based on the limited identifying data in GAO's request. We hope to provide that information to GAO in the near future.

QUESTION 8: What is the total of funds actually recovered through the savings and loan prosecutions to date?

ANSWER: As we have reported to Congress under the Crime Control Act, because of the various components involved in collection of these monies, it is impossible for us to know precisely the total funds collected. For instance, various regulatory agencies employ outside fee counsel to recoup lost funds, which are neither reported to, nor tracked by, the Department of Justice. These funds are not paid into the Treasury through, or rediburaed by, the Department of Interior. Again, the Department receives no notice of these payments and therefore cannot track them. To the extent we receive the funds for dispersal directly, the monies are regularly reported to Congress.

QUESTION 9: What are the criteria used by the Department in selecting the savings and loan cases for investigation and prosecution?

ANSWER: The criteria for prioritizing the S&L cases vary slightly from U.S. Attorney's Office to U.S. Attorney's Office. Priority is given to the Top 100 referrals from the regulatory agencies last July, other priority referrals received at headquarters level, and priority matters delineated through the local bank fraud working groups. The Attorney General has repeatedly assured Congress and the public that all major cases will be evaluated, and where appropriate, prosecutions will be brought. It should also be noted that the prosecutions being undertaken are not exclusively simple kickback or diversion cases. Complex loan flips, nominee loans, reciprocal loan agreements and change of control cases constitute increasing portions of the Financial Institution Fraud caseload.

QUESTION 10: What are the priorities of the new Special Counsel for financial institution fraud cases?

ANSWER: The President has nominated Ira H. Raphaelson, a career prosecutor and former Interim U.S. Attorney for the Northern District of Illinois, to hold the position created by the Crime Control Act. Mr. Raphaelson presently awaits confirmation by the Senate.

Since January 13, 1991, Mr. Raphaelson has been detailed from the U.S. Attorney's Office in Chicago to the staff of Deputy Attorney General William P. Barr, in order to serve as Acting Special Counsel and maintain continuity within that office and this priority program. During that time, Mr. Raphaelson has spent considerable time reviewing the FIRREA program with former Special Counsel Richmond, various DOJ components, representatives of the regulatory and investigative agencies and counterparts in the field. He has been involved in such diverse special projects as helping establish operational guidelines for the newly created New England Bank Fraud Task Force, and helping draft portions of the Administration's comprehensive banking reform initiative on behalf of the Department of Justice. Many of his efforts have been the subject of the Department's last two reports to Congress under the Crime Control Act.

Coordination of the effort against Financial Institution Fraud within the Department, with the regulators, with the investigative agencies and in the field is his highest priority. Training of the newly acquired employees has been another area of activity, as has improvements in case tracking and reporting mechanisms. Mr. Raphaelson has also been actively involved in refining our ability to report promptly on our FIRREA efforts to Congress, and was intimately involved in the preparation of our 1990 Annual report, as well as our January-February and March-April Crime Control Act reports, copies of which have been distributed to Congress.

QUESTION 11: In December 1989, you announced the formation of 26 financial institution fraud task forces, using the Dallas Bank Fraud Task Force as a model. Dallas Task Force members from Justice, Treasury, financial institution regulatory agencies, and other agencies are co-located and jointly work on cases. As you have noted, the results have been impressive. Could you describe the extent to which the 26 other task forces are organized and function like the Dallas Task Force and their results to date? What improvements to the programs are currently being planned or implemented?

ANSWER: In 1987, the U.S. Attorney in Dallas, Texas, Marvin Collins, faced with a staff reduced by attrition and Gramm-Rudman restrictions, limited numbers of white collar crime experts and an unprecedented influx of allegations of significant criminal activity intertwined with the thrift industry collapse, asked the Department of Justice for additional resources. Ultimately, attorney resources from the Criminal Division's Fraud Section, both relocated to Dallas and travelling there on temporary duty assignments, were joined by AUSAs from Mr. Collins staff in a joint venture of unprecedented scope. Drawing on existing investigative resources and scarce resources provided by responsible law enforcement and regulatory agencies, the Dallas Bank Fraud Task Force was born.

In Dallas, co-location of the resources was valuable as a device fostering communication among the Task Force members. Because of space limitations in the U.S. Attorney and investigative agency offices, the attorneys and agencies co-located in the FBI offices. Currently, only the IRS Criminal Investigative Division Investigators are permanently "co-located" with the attorneys in the new task force offices. FBI and regulatory agents are located a short distance away. Even without co-location, the Task Force continues to achieve outstanding results.

When the Dallas Task Force began, there was, of course, a desire to promote a team approach among the visiting lawyers "from Washington" and the local AUSAs. There was a desire to promote teamwork among the investigative and regulatory agencies. There was also a desire to have the investigative/regulatory resources immediately available to the lawyers to promote not only teamwork but to avoid needless delays. Finally, there was a realization that in a State as big as Texas, and a district as large as Mr. Collins', the easier the access to one another, the greater the efficiency of the overall operation.

At the same time that the Dallas model was becoming operational, U.S. Attorneys offices in cities such as Chicago, Los Angeles and New York developed highly successful financial institution fraud programs of their own. Some of these offices enjoyed access to investigative agencies housed in the same federal building as some which did not.

Before the Dallas Bank Fraud Task Force and long before the S&L crisis captured public attention, the notion of joint, cooperative law enforcement ventures in addressing financial institution fraud was a Department of Justice goal. Fostering that cooperative spirit is an ongoing effort, and while the mechanisms to achieve it vary and change over time, it remains the consistent goal. For instance, the current national model for cooperation between regulators, investigators and prosecutors was developed in Chicago by the Postal Inspection Service, FBI and U.S. Attorney's Office -- the Bank Fraud Working Group.

In 1989, additional investigative resources were allocated to 27 FBI field offices serving 37 United States Attorney's Offices, which received additional attorney resources at the time of the December 1989 press release. The reference in that release to increased allocations in 27 cities was designed to track directly the FBI allocations. Since that time, most of the 93 United States Attorney's Offices have received allocations of additional Assistant United States Attorneys (AUSAs) to use against financial institution criminal and civil offenses.

While we have already reported to Congress under the Crime Control Act that we have convicted over 500 persons in major S&L-related crimes since October 1988, a brief statistical comparison of the overall performance of the 27 districts described in the press

release from October 1988 to December 1989 and December 1989 to the present reveals the following:

NOTE: The numbers in this analysis are only for the 27 cities described in the 1989 press release and not for all 93 United States Attorney's offices. Moreover, these numbers are only for S&L matters and do not rsflect prosecutions relating to fedsrally snsured banks and credit unions.]

	10/1/88-12/31/89	12/31/89-4/30/91
Indictments:	114	189
Defendants charged:	192	322
Defendants convicted:	109	268

Thsse numbers show a dramatic increase in indictments (66%) and number of defsndants charged (68%) and a spectacular 146% increase in the number of defendants convicted. These results underscore the utility of a varisd and creative approach.

While the press release in December 1989 holds up Dallas as a model, it was nevsr intended to be an exclusive "mold" in which to pour the newly distributed resources. The creativity, flexibility and success of the Dallas Task Force are what the Department wants to replicate -- not nscessarily the composition or layout of its office space. The numbers outlined above plainly dsmonstrate the success of this approach.

Law enforcsmsnt must rsmain flexible in formulating its response to the need. White collar criminals follow no single blue print in carrying out their frauds. The S&L crisis was the result of a number of factors, including criminal activity. But that criminal activity took more than one form, and the form varied from criminal-to-criminal, institution-to-institution, region-to-region. Moreover, the more of thsse cases we did, the better ws learned how to do them. Our prosecutive approach evolved and continues to do so. What worked in Dallas in 1987, worked differently in December 1989 and works differently today. What was an effective investigatory technique there might not be effective in some other districts. For all of these reasons, I encourage individual U.S. Attorneys to devise e program that works best for their individual districts. I believe that those programs are the ones that can be most successful in integrating resources and tailoring the law enforcement response to their district's particular problem.

The creative model of Dallas has been successful insofar as the six New England United States Attorneys are concerned, because they, too, have asked to get ahead of a potential regional problem, anticipated by the FDIC, through the creation of the New England Financial Institution Fraud Task Force. A regional approach and co-location are goals of the emerging New England Task Force.

"Improvements" to the programs are constantly being implemented by the United States Attorneys, the investigative agencies and, where appropriate, the Deputy Attorney General through his Acting Special Counsel. This includes maximizing available resources and training. As Congress knows from our Crime Control Act reports, the overall success rate of the program is staggering. We are also seeking to improve our case management, monitoring and reporting abilities on an ongoing basis.

Coordination: Twenty-seven Financial Institution Fraud coordinators from task force districts were assembled in April, 1991, along with the Dallas Bank Fraud Task Force coordinator, were assembled as part of the Economic Crime Training Program sponsored by The Executive Office of United States Attorneys and the Criminal Division's Fraud Section. The coordinators met with the Acting Special Counsel, law enforcement and regulatory agency representatives to explore common problems and share solutions.

Training: Additional programs for the 27 task forces are on the drawing board, as are plans to expand these forums to include the other Financial Institution Fraud coordinators. Training programs for new AUSAs, experienced AUSAs and expert forums are all underway. Regional joint training programs involving AUSAs, agents and regulators are also being planned.

Goal: Our goal is to produce a coordinated effort by fully trained investigative agents and prosecutors and thus meet the President's marching order of putting the S&L crooks in jail. In the process, we will develop an unprecedented pool of investigators and prosecutors who are prepared to deal with whatever emerging white collar criminal problems may develop in the next decade.

QUESTION 12: In January 1991, the Secret Service also began to investigate financial institution fraud. Could you provide your assessment of how well the FBI and the Department of Justice are working with the Secret Service in this area, and what practices are in place to maximize the two agencies' efforts in this area?

ANSWER: The Secret Service has been, and continues to be, integrated into our FIRREA efforts through the local United States Attorneys. A memorandum from the Deputy Attorney General to the United States Attorneys was designed to facilitate this process. A memorandum of understanding between the USSS and FBI was also completed, with the assistance of the Acting Special Counsel, and signed by the respective agency directors, to facilitate integration and coordination. All reports from the field indicate a smooth transition. Utilization of the Secret Service resources is initially left to the discretion of the United States Attorney and Special Agents in Charge of the FBI and the United States Secret Service.

QUESTION 13: As of December 31, 1990, there were 3,702 pending major cases involving financial institution fraud. In what percentage of these cases does the Department expect to seek indictments?

ANSWER: It is impossible to estimate with precision. We plan to bring as many indictments as are feasible within the newly expanded statute of limitations.

QUESTION 14: What percentage of the 338 failed savings and loan fraud cases pending as of December 31, 1990, involve investigations into activities by senior management of the failed savings and loans?

ANSWER: With respect to ongoing investigations, we do not track this information on a national level, and even if we did, it is unclear whether Criminal Rule 6(e) of the Federal Rules of Criminal Procedure would allow us to provide it. To the extent that this question relates to cases in which indictments have been brought, nearly one-third of those charged in major cases are either Chief Executive Officers, officers, or directors. These figures have been supplied to Congress as part of our Crime Control Act reports.

QUESTION 15: In 1989 and 1990, how many criminal trials involving failed savings and loans have resulted in verdicts of guilty, not guilty or a hung jury? How many cases have been disposed of by guilty pleas and pleas of nolo contendre?

ANSWER: The Executive Office for United States Attorneys, is presently tracking "major" savings and loan prosecutions in which significant activity has occurred since October 1, 1988. "Major" cases include those involving: loss or fraud of $100,000 or more; officers, directors or shareholders; multiple borrowers or other major factors. This data base does not differentiate between cases brought relating to failed institutions and those brought that involve institutions which are still operating. Nor does it differentiate between convictions that occur by guilty plea, nolo contendere pleas or convictions after trial. The following statistics are available:

	1989	1990	1991 (thru 4/30/91)
Defendants convicted	112	253	157
Defendants acquitted	2	11	27*

*Includes 21 acquittals in U.S. v. Saunders, Northern District of Florida.

QUESTION 16: How many prosecutors are being assigned to handle the savings and loans industry cases for FY '92?

ANSWER: Prosecutors have not been assigned to do S&L matters exclusively. They have been assigned to investigate and prosecute all types of financial institution fraud covered by FIRREA. They have been allocated to United States Attorneys and other Justice components and those allocations have been reported to Congress under the Crime Control Act.

QUESTION 17: How many private law firms nationally have been assigned savings and loans cases by the Department? Please provide the amount of funds recovered by each of these firms and the fees paid to them by the Department. Please specify both the total amount of fees paid and the hourly rate charged by the various firms.

ANSWER: Private law firms are not authorized to handle criminal savings and loan prosecutions. United States Attorneys' offices around the country and various Department of Justice litigative organizations are handling these cases. As far as we have been able to ascertain, no private firms have been retained by the Department of Justice in civil actions involving savings and loans.

QUESTION 18: How many forfeiture actions have been taken to date by the Department in the savings and loans area? How many prosecutors are allocated to these efforts for FY '92?

ANSWER: Twenty-six (26) forfeiture actions involving savings and loan cases have been filed in twelve (12) districts: Central District of California, Colorado, Middle District of Florida, Eastern District of Louisiana, New Jersey, Eastern District of New York, Western District of New York, Oklahoma, South Carolina, Eastern District of Texas, Northern District of Texas and Southern District of Texas.

Assistant United States Attorneys and Division attorneys are not dedicated to one function or another exclusively and no allocations can be made until Congress has passed the Department's FY 92 budget. When we are sure of the funding level that has been provided, we will be able to allocate these resources to our priority programs.

Foreign Agents Registration Act:

QUESTION 19: What is the Department's policy towards criminal prosecutions of FARA violations? How many criminal prosecutions have been brought under the Act since 1980?

ANSWER: The decision to recommend the institution of civil or criminal proceedings is in the first instance, made by the attorney handling the case. This decision and the decision of those who review it are, in part, based on the following factors:

1. Since the Act is a disclosure statute, whether the public

interest will be better served by an injunction requiring regietration and the reeulting dieclosure, or by criminal prosecution.

2. The nature and quality of the evidence. Criminal casee require proof beyond a reaeonable doubt of a willful violation of the Act. Civil cases require a leseer degree of proof, i.e., a preponderance of the evidence.

3. Whether there wae a concerted effort by the subjecte to conceal the relationehip in order to enhance the agent'e ability to serve a foreign principal.

4. Whether the agent's activities involve other criminal violatione.

Only one criminal case has been brought since 1980. On October 31, 1986, a criminal information wae filed against John Peter McGoff, charging him with a willful failure to regieter as an agent of the Republic of South Africa (RSA).

United States v. John P. McGoff, Crim. No. 86-369 (D.D.C 1986).

Based on the etipulations that the laet alleged act of agency occurred on June 13, 1979, the Dietrict Court concluded that the five-year Statute of Limitatione (18 U.S.C. § 3282) barred the prosecution of McGoff since the criminal information had not been filed before June 13, 1984.

On October 13, 1987, the Court of Appeale, with Judge Bork dissenting, affirmed the District Court decision that the Statute of Limitatione commenced in a failure to regieter eituation on the laet day that the unregistered agent acted within the United States, United States v. John P. McGoff, 831 F.2d 1071 (D.C. Cir. 1987).

QUESTION 20: What is the Department'e policy towards oriminal prosecutions of FARA violations? How many oriminal prosecutions have been brought under the Aot sinoe 1980?

ANSWER: See reeponee to question 19.

OSHA and other Workplaoe Safety Violations:

QUESTION 21: Has the Department considered reoommending inoreaeed sanotions for OSHA and other workplaoe safety violatione? If so, what are these reoommendations?

ANSWER: Yee. It is a criminal offense to willfully violate an OSHA eafety etandard when that violation cauees death to an employee. 29 U.S.C. § 666(o), the present etatute eete a maximum period of imprieonment of six months for firet offenders. The Department of Juetice has recommended that the maximum period of

imprisonment for criminal violations be increased to reflect the seriousness of willful conduct that results in the loss of human life.

QUESTION 22: Please provide the number of criminal prosecutions of Occupational Safety and Health Act violations for each of the previous five fiscal years, as well as the number of attorneys assigned to OSHA cases for each of those years. For each prosecution, please provide the outcome of the case including the sentence imposed.

ANSWER: The Department does not maintain a database on criminal OSHA prosecutions. Attorneys who work on OSHA cases also work on other matters, so that it would not be feasible to obtain the number of attorneys who may have had some role in OSHA criminal prosecutions within the Department of Justice and in the U.S. Attorney's offices. Some recent criminal OSHA prosecutions with their outcomes are listed below:

1) Guilty verdicts in Texas trench collapse case. On May 2, 1991, a jury in the Northern District of Texas in United States v. ABC Utilities and Bruce Shear found ABC Utilities guilty of two counts of criminal OSHA violations and Bruce Shear guilty of one count of a criminal OSHA violation. The charges resulted from a March 23, 1987 trench collapse in Azle, Texas, which resulted in the death of an employee. Sentencing is scheduled for June 7, 1991. Two attorneys from the General Litigation and Legal Advice Section of the Criminal Division are handling the case.

2) Guilty verdict in Wisconsin sewer tunnel explosion case. On March 21, 1991, S.A. Healy Co. of Illinois was fined $750,000 upon conviction after a jury trial of three counts of OSHA violations. The charges resulted from 1988 sewer tunnel explosion in Milwaukee which caused the deaths of three workers. Attorneys from the U.S. Attorney's Office in Milwaukee handled the case.

3) Guilty verdict in South Dakota trench collapse case. On September 12, 1989, Howard Elliott, the president of Elliott Plumbing and Heating of Avon, South Dakota, was sentenced to six months of imprisonment with all but 45 days suspended, upon his plea of guilty to a criminal OSHA violation. The defendant also received three years of probation, during which he may not engage in the trenching or excavation business, and is required to pay $21,452 to the widow of an employee who was killed. The charges resulted from a 1988 trench collapse in which two workers were killed. An attorney from the General Litigation and Legal Advice Section of the Criminal Division handled the case.

QUESTION 23: How many OSHA criminal referrals has the Department received from the Department of Labor during each of the past five fiscal years?

ANSWER: We have not maintained statistics on the number of OSHA referrals received each fiscal year from the Department of Labor. We estimate that between three and twelve cases per fiscal year were referred during fiscal years 1986 through 1990. We have noted a substantial increase in referrals in fiscal years 1990 and 1991.

QUESTION 24: Please provide the number of referred cases declined as well as a brief description of the reason for each declination.

ANSWER: We have not maintained statistics on the number of referred cases declined, but estimate it to be comparable the rate of declination of other criminal matters. The most frequent reason for declining prosecution of a possible OSHA criminal violation is that the evidence is insufficient to establish beyond a reasonable doubt that a federal crime has been committed. The second most frequent reason is that the results which could potentially be obtained do not justify the expenditure of scarce prosecutorial resources involved. Should the maximum penalties be increased to make OSHA criminal offenses felonies rather than misdemeanors, as we have recommended, we anticipate that the number of declinations on the second ground will be reduced.

QUESTION 25: Are there statutes besides OSHA under which criminal prosecutions for workplace safety violations could be brought? Have any such prosecutions been brought? If not, have such prosecutions been contemplated?

ANSWER: The Mine Safety and Health Act provides a comprehensive health and safety scheme for mining employees in this country, including criminal penalties for willful violation of mandatory health and safety standards. The criminal provisions of the mine safety and health laws are regularly used as part of an overall scheme of civil and criminal enforcement. In addition, some prosecutions of workplace safety cases proceed under various false statement statutes, particularly where there is a pattern of fraud in safety testing or reporting. Prosecutorial consideration of the results of an investigation routinely includes consideration of possible alternative theories of prosecution.

Money Laundering:

QUESTION 26: Does the Department believe that current money laundering statutes are adequate to address cases involving savings and loan fraud and other white-collar crime?

ANSWER: No. Our experience with the money laundering statutes has revealed a number of areas in which the law should be improved. A set of proposed amendments, including a section-by-section analysis, is attached in Appendix I.

QUESTION 27: What is the Department's role in the negotiation of Mutual Legal Assistance Treaties concerning money laundering?

ANSWER: Representatives of the Justice Department's Criminal Division are active participants in the negotiation of Mutual Legal Assistance Treaties relating to the exchange of information in criminal matters. It is the goal and position of the Department during such negotiations that the treaties should cover the widest possible range of offenses, including the laundering of the proceeds of drug trafficking and other serious crimes.

Criminal Division representatives from the Office of International Affairs and/or the Money Laundering Section, along with representatives from the State and Treasury Departments, also serve as members of negotiating teams involving proposed agreements with other countries concerning the recording and exchange of information on substantial currency transactions.

QUESTION 28: Who in the Department was involved in the recent negotiations with Panama concerning the MLAT and money laundering?

ANSWER: Representatives of the Criminal Division's Office of International Affairs were present at most rounds of negotiations on the proposed Mutual Legal Assistance Treaty with Panama, beginning in the spring of 1990. Deputy Assistant Attorney General Mark Richard also participated in some of the early rounds, as did a representative from the Department's Tax Division.

The most recent round of discussions in Panama, which culminated in the initialing of a treaty text, was attended only by representatives of the State Department. Consultations and exchanges of viewpoints with the State Department were, however, conducted by members of the Criminal Division and Assistant to the Attorney General Robin Ross by telephone and telefax. Attorneys from the Criminal Division's Office of International Affairs traveled to Panama shortly after the initialing of the draft text for treaty implementation discussions with Panamanian officials. The coincidental resignation or removal of key members of the Panamanian government the day before the talks commenced, however, undercut the value of the discussions. These implementation discussions will resume in the near future. It is our present intention not to transmit the treaty to the Senate until satisfactory implementation talks are held.

QUESTION 29: Did the Department recommend that implementing legislation in Panama accompany the MLAT agreement? If so, to whom was this recommendation made? If not, does the Department believe that the MLAT requires the production of information that is inconsistent with existing bank secrecy laws in Panama?

ANSWER: Throughout the course of negotiations with Panama, the Justice Department has consistently taken the position that the potential need for implementing legislation in Panama should be fully explored, and to the extent possible, resolved before the signing or ratification of a treaty. The negotiators for Panama believe, but cannot definitively assure, that the provisions of the

treaty, if ratified, would become the substantive law of the land and would embue the competent authorities in Panama with the necessary legal ability to comply with the obligations imposed by the treaty, including the ability to pierce bank secrecy in appropriate cases. The Panamanian negotiators reportedly also explained that the interplay between the treaty's provisions and existing law in Panama could be subjected to court challenge. Depending on the outcome of such litigation, the enactment of implementing legislation might become necessary in the future.

Federal Contract Fraud:

QUESTION 30: The Department has supported the exclusion of Federal benefits, including receipt of Federal contracts, from individuals convicted of drug violations. It has also proposed suspending such benefits for convicted individuals who are delinquent in their restitution payments. Would the Department support the same exclusion for contract-related offenses? If not, why not?

ANSWER: The Department opposes any measure that would authorize the courts to exclude persons from government contracting on the basis of conviction of contract-related offenses or that would mandate exclusion from government contracting on this basis. We oppose provisions for those convicted of contract-related offenses similar to the ones implemented under the Anti-Drug Abuse Act of 1988. Because the civil sanction of debarment has not historically been used for penal or punitive purposes, we believe that it would be improper to use debarment as a supplemental penalty in cases involving convicted contractors. Debarment decisions should remain in the hands of the designated officials within the executive branch acquisition agencies who have the demonstrated expertise and experience in considering evidence of a contractor's "present responsibility."

QUESTION 31: Does the Department believe that government contractors occupy a position of trust and should therefore be severely punished for contract-related crime?

ANSWER: Contractors who are convicted of contract fraud and other criminal offenses related to the procurement process should be punished for their conduct. Companies that have contracted with the Government occupy a position of trust, and they are clearly expected to be capable of handling the work they take on and of operating honestly and ethically. However, not every case of contractor fraud will provide the basis for the upward adjustment under Section 3B1.3 of the U.S. Sentencing Commission's Guidelines, which applies to individuals who abuse their positions of trust.

QUESTION 32: According to the U.S. Sentencing Commission, none of the organizations convicted of Federal contract-related fraud since 1988 have had in place a meaningful program to prevent and detect crime. Would the Department agree that such convicted

organizations should, at the very least, receive sentences that include mandatory terms of probation? If so, what terms of probation should be required?

ANSWER: We understand from the Sentencing Commission that there have been some cases since 1988 in the contract-related fraud area in which the defendant had an effective compliance program. Nevertheless, the Department would agree that where an effective compliance program does not exist, sentencing guidelines mandating the imposition of probation are appropriate. An organization convicted of violating the law and not having a compliance program in place is in danger of committing further violations. The goals of deterring crime, protecting the public from further crimes of the defendant, and rehabilitating the defendant would be served by guidelines requiring the imposition of probation where an effective compliance program does not exist. These goals are among the purposes of sentencing set forth in the Sentencing Reform Act of 1984, 18 U.S.C. §3553(a)(2). The Sentencing Commission has included in its guidelines recently submitted to the Congress a provision requiring the imposition of probation if at the time of sentencing an organization having 50 or more employees does not have an effective program to prevent and detect violations of law.

We believe that when probation is imposed because of the absence of a compliance program, the term of probation should be sufficient to assure that an effective program is developed and implemented. The maximum term of probation authorized by statute is five years, and in the case of a felony, a probationary term must be at least one year. 18 U.S.C. §3561(b).

QUESTION 33: During hearings last year, the Department testified that it had nothing more than an advisory role in the suspension and debarment proceedings that accompany criminal contract-related convictions. Does the Department believe that there should be a more defined nexus between the suspension/debarment process and the criminal proceedings?

ANSWER: The Department believes that it is neither necessary nor advisable to establish a more defined nexus between the suspension/debarment process and criminal proceedings. The contracting agencies are uniquely qualified to make suspension and debarment decisions given their expertise, experience and ability to monitor the contractors' activities. Moreover, the creation of a more defined nexus with the suspension and debarment process may implicate possible double jeopardy consequences arising from successive criminal and civil actions. In United States v. Halper, 490 U.S. 435 (1989), the Supreme Court held "that under the Double Jeopardy Clause a defendant who has already been punished in a criminal prosecution may not be subjected to an additional civil sanction to the extent that the second sanction may not fairly be characterized as remedial, but only as a deterrent or retribution." Currently, debarment and suspension proceedings are considered remedial in nature as they are designed to protect the government against improper contracting and to protect the integrity of the

particular government program; they are not to be used for punishment. Federal Acquisition Regulation, 9.402; United States v. Bizzell, 921 F.2d 263 (10th Cir. 1990). Tying the suspension and debarment process more closely to criminal proceedings may cause that process to become punitive in nature and could, under Halper, cause suspension and debarment and criminal penalties to become mutually exclusive remedies.

Sentencing Guidelines -- Organizational Sanctions:

QUESTION 34: Has the Department actively sought out the views or opinions of Federal judges concerning the proposed sanctions? Please list those Federal judges with whom the Department has consulted.

ANSWER: Department officials most closely involved in the area of organizational sentencing policy have not actively sought out the views or opinions of Federal judges concerning the proposed organizational sanctions. The Department has, however, discussed the issue with Federal judges who are members of the United States Sentencing Commission or who have been members in the past: Judge William W. Wilkins, Jr.; Judge George E. MacKinnon; Judge A. David Mazzone; and Judge Stephen G. Breyer.

QUESTION 35: Has the Department prepared a statutory analysis of the Commission's authority to issue binding organizational sanctions? Please provide any opinions or analyses regarding this authority.

ANSWER: There are no published or publicly available Department legal opinions or analyses on this issue and under the Executive Branch policy on the confidentiality of Department of Justice legal advice we cannot disclose whether any component of the Department has provided legal advice concerning the issue.

Office of Justice Programs:

QUESTION 36: The Department's Inspector General recently found that BJA discretionary funds have been improperly transferred to other OJP bureaus. Does the Attorney General agree?

ANSWER: The Department of Justice's Bureau of Justice Assistance (BJA) Edward Byrne Memorial State and Local Law Enforcement Assistance Discretionary grant funds are not improperly transferred to other Office of Justice Programs (OJP) bureaus. (Perhaps the frequent use of the word "transfer" has greatly contributed to this misconception.)

When OJP or its bureaus enter into collaborative agreements, the funds are used for statutorily authorized purposes -- purposes for which the funds were intended and appropriated. The OJP bureaus have the statutory authority to carry out the program being funded.

Additionally, Congress has recognized the efficiencies of Federal agencies cooperating with one another as set forth in 42 U.S.C. § 3788(b) as follows:

> "The Office [of Justice Programs], the Bureau of Justice Assistance, the National Institute of Justice, and the Bureau of Justice Statistics are authorized, on a reimbursable basis when appropriate, to use the available services, equipment, personnel, and facilities of Federal, State, and local agencies to the extent deemed appropriate after giving due consideration to the effectiveness of such existing services, equipment, personnel and facilities."

All collaborative efforts among OJP and its bureaus are for the benefit of state and local units of government, and in almost every instance, all funding for these collaborative efforts go directly to state or local units of governments. For example, in the case of Criminal History Records Improvement administration by the Bureau of Justice Statistics (BJS), with funds from the BJA, every dollar goes directly to state or local governments and none of the funding is used by BJS in administering this program.

OJP has a long history of collaborative agreements and joint funding of projects. All such funds, as stated above have been, and will continue to be, used for their statutory purposes, that is to benefit state and local criminal justice systems.

Additionally, the National Drug Control Strategy calls for close coordination among Federal agencies. In some cases, this may involve collaborative agreements among OJP's bureaus. The benefits of this approach include:

- the sharing of expertise and experience on issues of vital importance to state and local governments;
- the realization of greater efficiencies by pooling resources, preventing duplication, and coordinating like activities; and
- less money is spent on overhead.

OJP can utilize existing Federal resources instead of paying a private grantee to perform the same technical assistance or other function to benefit state and local criminal justice agencies. OJP bureaus enter into collaborative efforts when a specific bureau is the most qualified provider of services being sought. Utilizing this expertise may more directly and cost-effectively serve the interest of States and localities. Collaborative efforts do not "augment" the other bureau's appropriation.

No functions, powers and duties are transferred or delegated when BJA enters into collaborative agreements with other OJP bureaus.

"The functions, powers, and duties specified in this part

to be carried out by the Bureau [of Justice Assistance] shall not be transferred elsewhere in the Department of Justice unless specifically hereafter authorized by the Congress by law." 42 USC § 3766a(b).

The term "transfer of functions, powers, and duties" connotes a complete removal from an agency in a given area of all functions, powers, and duties. Not only are OJP's Office of the Comptroller and Office of General Counsel alert to such collaborative agreements within the Department, they also are watchful to ensure that such complete transfers of "functions, powers and duties" do not occur by OJP agencies to other agencies within the Executive Branch.

The Department feels that it is important to continue these types of collaborative agreements and efforts, and not force BJA to make grants to private-sector providers, which would be a disservice to state and local governments. It would result in denying the best services available at the least cost. It would also be contrary to the spirit of the Economy Act, 31 USC Section 1533. Also, these agreements help focus on the importance of coordinating the resources among OJP's bureaus, by providing a comprehensive approach in addressing complex law enforcement issues. There are currently a myriad of State and local programs now being funded by the OJP through collaborative agreements that are providing crucial assistance and enhancements which aid State and local units of government in successfully fighting our nation's war against crime and drugs.

QUESTION 37: Please provide any legal analyses or opinions concerning the final grant making authority of the OJP bureau directors and the authority of the Assistant Attorney General for OJP to modify or cancel bureau grants.

ANSWER: The Department's legal analysis concerning the issues raised in question 37 is set forth in the Department's March 12, 1991 letter to the Chairman of the Judiciary Committee's Subcommittee on Crime and Criminal Justice and May 1, 1991 letter to the Ranking Minority Member of the Government Operations Committee's Subcommittee on Government Information, Justice and Agriculture. Copies of the letters are enclosed in Appendix II.

U.S. Attorneys:

QUESTION 38: Recently the Subcommittee on Intellectual Property and Judicial Administration held a reauthorization hearing on the U.S. Attorneys' Offices. At that time, the General Accounting Office testified as to ways that the Department of Justice could improve their allocation of resources in the U.S. Attorneys' offices. Will you incorporate the ideas of the General Accounting Office into your resource allocation process? Please explain.

ANSWER: As the General Accounting Office (GAO) representatives testified, the Department worked in close cooperation with GAO personnel from the beginning in their allocation study.

The Department agrees with GAO that the model they developed could be halpful in making resource allocations whan considered in conjunction with other factors. GAO provided the Exacutiva Office for United States Attorneys with tha tapes and computer discs utilized to implement this model. The Exacutive Offica will use these programs as an aid in futura allocation dacisions. In fact, GAO's recommanded allocations of Financial Institutions Raform, Recovery and Enforcement Act and Organized Crime Drug Enforcemant Task Force attorney positions ware considared in responding to those Districts whioh requasted more resources in Fiscal Year 1991. As stated in the GAO report, howaver, "Professional judgmant of responsibla Justice Department officials is obviously critical to the proper interpretation and use of the modals."

It was our belief that there was a problem with GAO's statistical method. As pointed out to tham, thair time requiramant analysis, in our opinion, is not a completaly reliabla tool. To judge that a case with a trial is always the most time consuming is incorract. A "matter" that evantually results in a guilty plaa to an information can be more tima consuming than indicted casas with short trials. Also, under GAO's model, the complex bank fraud trial of a bank prasidant would be waighted the same as a simplar trial involving a bank teller.

Wa ara currently exploring various ways to accurataly documant, with specificity, personnel resources required and various other costs involvad in handling various criminal and civil litigation activitias. These afforts will hopefully identify a practical method for implementing programs which objectively differentiata specific case types on the basis of the resources and costs required for their succassful disposition. Thase considerations ara also a part of tha Departmentwide case management system.

In the meantime, we continue to allocate resources based on an in-dapth analysis of numarous important factors such as the number of agents to be assignad to a District, number of cases pending in the program area, number of trials in that area, number of trials ovar ten days, avarage Assistant United States Attorney (AUSA) workweek, AUSA traval time, number of judges available to move cases, number of AUSAs requested by the United States Attorneys and justifications provided, GAO recommendations and other factors.

Witness security:

QUESTION 39: There appears to be a gap in the witness security program vis-a-vis foreign nationals and their families. This could involve, for example, a foreign contact (or members of his or her family) who was instrumental in a major international drug case. Do you need additional statutory provisions such as

provisions allowing the Attorney General to designate these personnel as permanent residents?

ANSWER: Critical to the success of the Witness Security Program is the Government's ability not only to offer protection from harm to the potential Program participants (and immediate family members, as appropriate), but also to help them become established members of society under a new identity and in a locality where they are safe from those who pose a threat to their lives. Under current law, foreign factual witnesses can be paroled into the United States to testify. Although they can remain in the United States on parole status as long as a reasonable danger to their lives remains, the witnesses and their families would not have permanent immigration status and could be subject at any time to expulsion back to their native country at the discretion of government authorities. In the absence of a guarantee of permanent status in the United States, many potential witnesses decline to testify since, as a result of such testimony, they could no longer safely return to their homelands.

In addition, foreign nationals who do testify and enter the Witness Security Program are faced with an additional problem. Because of the indefinite nature of their immigration status, the Marshals Service is unable to provide the personal documents (such as birth certificates, social security numbers, academic records, etc.) that would enable the alien witness to obtain employment, pursue higher education and otherwise become productive members of a community.

The Administration proposed legislation in the past Congress to amend Chapter 224 of Title 18, U.S.C., to authorize the Attorney General to grant permanent resident status to alien participants in the Witness Security Program. Section 741 of the President's crime bill (H.R. 1400) would accomplish that end.

RICO:

QUESTION 40: The Judiciary Committee is in the process of considering the application of the Racketeer Influenced and Corrupt Organizations Act. Do you believe there is a need for reform, particularly in the civil area?

ANSWER: We recognize the need for some limits on private RICO suits. At the same time, the criminal and civil RICO provisions continue to be extremely important to our law enforcement program. Thus, we place great importance on preserving RICO for our efforts against serious criminal conduct. In testimony before the House Subcommittee on Intellectual Property and Judicial Administration on April 25, 1991, we expressed that if the concerns expressed in our testimony were met, we could support H.R. 1717.

Bureau of Justice Assistance:

QUESTION 41: When is the President going to submit a nomination to fill the vacancy of the Director of the Bureau of Justice Assistance? Why has it taken so long to fill this position?

The President nominated Donna Owens, the former Mayor of Toledo, Ohio, during the last Congress. The Senate Judiciary Committee was reluctant to move on her nomination and the Senate did not act on her nomination prior to adjournment sine die. Subsequently, Mayor Owens withdrew her name from consideration. The Administration is currently searching for a suitable individual for this position and we hope to send a nominee to the Senate soon.

Information Resource Management:

QUESTION 42: In November 1990, the GAO reported that under present conditions it is unlikely the Attorney General or senior IRM official can effectively and efficiently manage information resources at Justice. Over the last 11 years, GAO made a series of recommendations designed to improve Department ADP management and operations.

a. What is the status of Department improvements to its ADP management and actions to implement GAO's recommendations, specifically the development of an ADP management plan and uniform case management system?

ANSWER: A detailed response to this question is contained in the answer to question 1 (Part I).

b. What is the status of Justice efforts to assess the impact of recent computer security breaches, specifically the development of damage assessments from compromised sensitive data?

ANSWER: The Assistant Attorney General for Administration sent a memorandum on December 7, 1990, all Department components requesting that each component analyze whether a situation similar to that which occurred in the United States Attorney's office in Lexington, Kentucky could have happened elsewhere. The Assistant Attorney General also requested a damage assessment from the Lexington office and other offices that have experienced security incidents to determine if sensitive information had been compromised. There is no evidence that any sensitive information was compromised as a result of recent security incidents.

INSLAW:

QUESTION 43: What is the total direct and indirect cost incurred by the Department of Justice, to date, in its litigation with INSLAW? How many and what type of Department employees have been

involved in the litigation proceedings since these proceedings began? Please provide the current status of each proceeding including any outstanding motions filed (by either party).

ANSWER: The department's Civil Division has been involved in three litigative proceedings related to Inslaw: a petition for writ of mandamus for the Attorney General to conduct an investigation into the Department's actions in conjunction with Inslaw's software contract which was dismissed in December, 1990; a Contract Disputes Act matter; and a bankruptcy case. The costs incurred to date by the Division in this litigation with Inslaw total $550,672 in direct costs and $369,409 in indirect costs for a grand total of $920,081. At least 56 Civil Division employees have been involved in some aspect of the litigation proceedings: 32 attorneys, 16 paralegals and approximately 8 support staff.

Recent and significant progress has taken place in the bankruptcy proceeding. On May 7, 1991, the Court of Appeals for the District of Columbia ruled that contrary to the findings of the bankruptcy court the Department of Justice did not violate the automatic bankruptcy stay in its dealing with Inslaw, as Inslaw claimed. The Court of Appeals concluded that the lower court, in entering its judgments against the Department, acted in excess of its jurisdiction. The Court reversed and remanded the case with instructions to vacate all orders against the Department and to dismiss Inslaw's complaint.

The Inslaw suit invoking the Contract Disputes Act is also progressing. Inslaw's appeal to the Department of Transportation Board of Contract Appeals is currently in the discovery phase. The trial is expected to take place this fall.

Radiation Exposure Compensation Act:

QUESTION 44: The Radiation Exposure Compensation Act calls for the Justice Department to issue its regulations, guidelines and procedures to implement the Act within 180 days of the date of enactment. The Act was enacted on October 15, 1990, which means that the Department was required to act by April 13, 1991. Where do we stand in that process?

ANSWER: The Civil Division is currently preparing implementing regulations which deal with complex medical, legal and factual issues. In order to develop these regulations, the Department is actively consulting with numerous other Federal and State agencies, private individuals and hospitals, and the Mormon Church. We anticipate that draft regulations will be available for public comment in late spring. The length of time required to promulgate the regulations is due to the enormous complexity and multiplicity of the issues involved, and our desire to acquire as much

information as possible in order to draft regulations that will be workable and fair and impose as little burden as possible upon the claimants.

QUESTION 45: The Justice Department requested 17 additional positions (11 attorneys) to develop and implement the regulations pursuant to the Radiation Exposure Compensation Act, at a cost of almost $2 million. Considering that the regulations were scheduled to be issued this month, are these additional positions for Fiscal Year 1992 being requested to begin processing claims?

ANSWER: Yes, the positions requested for 1992 are needed to begin processing the thousands of expected claims. While we anticipate the bulk of these claims will be uncomplicated, requiring paralegals, clerks and data processing personnel, attorneys are also needed to handle disputed claims. We anticipate beginning to receive claims in the last month of fiscal 1991, after the draft regulations are finalized in late summer.

QUESTION 46: If not, how does the Department justify the request for so many additional employees?

ANSWER: Not applicable.

QUESTION 47: Has the Department made, or does it plan to make, any effort to publicize the existence of this compensation program to potential claimants?

ANSWER: The Civil Division is currently responding to inquiries from potential claimants. In addition, the Division has undertaken a very active outreach program with hospitals, the Navajo Tribe, the Church of the Latter Day Saints (the Mormons), and other local groups that are in contact with potential claimants, and is working closely with these groups to ensure that accurate information is disseminated. Once regulations are promulgated, the Division will continue to publicize the compensation program through appropriate avenues.

Customs Exception to Federal Tort Claims Act:

QUESTION 48: Do you know of any cases in which the Government has paid a claim for damages caused by the U.S. Customs Service?

ANSWER: The Department does not maintain statistical records of the kind that would permit a comprehensive answer to this question. However, there undoubtedly are cases in which the Government has paid a claim for damages caused by the U.S. Customs Service.

We have not been able to review all cases to determine whether damages were paid out of the Judgement Fund for action by the Customs Service. We expect to be able to provide such information under the Departmentwide case tracking system for which we are currently seeking appropriations.

QUESTION 49: In your opinion, does the "Customs exception" under the Federal Tort Claims Act apply to any damage caused by the Customs Service?

ANSWER: No, 28 U.S.C. § 2680(c) excepts from tort liability any "claim arising in respect of the assessment or collection of any . . . customs duty . . . or the detention of any goods or merchandise by any officer of customs . . . ." This exception does not include ordinary torts such as automobile accident claims.

QUESTION 50: Do you think this exception should apply to damages caused by negligence of a Customs agent while a vessel is being detained?

ANSWER: Yes, logically and practically, the "Customs exception" under the Federal Torts Claim Act should apply when a vessel is being detained to protect against costly, collateral litigation arising from this law enforcement activity.

Other Issues:

QUESTION 51: How many prosecutions have been brought for each of the presently existing statutes for which the President's crime bill would authorize the death penalty in each of the last ten fiscal years? What was the actual disposition of each case? Please identify the name and relevant case number or citation of each case.

ANSWER: The President's crime bill, H.R. 1400, authorizes the death penalty for violations of 18 U.S.C. § 794 (Gathering or delivering defense information to aid foreign government); § 2381 (Treason); § 1751(c) (Presidential assassination, kidnaping and assault); and 21 U.S.C. § 848(c)(1) (Continuing criminal enterprise). All of these statutes presently provide for a death penalty under certain circumstances, although only 21 U.S.C. 848 contains constitutional procedures creating an enforceable death penalty.

In addition, the bill provides the possibility of the death penalty for any felony violation of the Controlled Substances Act (21 U.S.C. § 801 et seq.), the Controlled substances Import and Export Act (21 U.S.C. § 951 et seq.) or the Maritime Drug Law Enforcement Act (46 U.S.C. App. § 1901 et seq.) where the death of a person results in the course of the violation or from the use of the controlled substance involved in the violation. These statutes (except for 18 U.S.C. § 848) do not presently carry a possible death sentence and the Department of Justice information management systems do not contain information as to which of these violations may have involved conduct resulting in the death of a person. Therefore, any statistical run of these violations would be

misleading as most of them would not have involved a death and would not be subject to a death penalty under the new crime bill.

The U.S. Sentencing Commission or the Probation Division of the Administrative Office of the United States Courts may have information on cases in which conduct resulting in a death was used to enhance a sentence. In some of those cases, the death penalty would now be possible, after a hearing under 18 U.S.C. § 3593.

Trial of Alexander Cooper and Darnell Davis, No. 89 CR 580. This is the first case in the country in which the government sought imposition of the death penalty under Title 21 U.S.C. § 848. In this multi-defendant Title III narcotics case, Cooper and Davis were charged with the murder of a potential government witness in furtherance of a continuing criminal enterprise, and a cocaine and heroin trafficking conspiracy.

In denying a motion to dismiss the indictment, on December 21, 1990, the United States District Court for the Northern District of Illinois turned back a wide range of constitutional attacks on the 2-year-old federal statute that provides for the death penalty for murders committed in furtherance of a continuing criminal enterprise. (U.S. v. Cooper, DC ND ILL, No. 89 CR. 580, 12/21/91.)

Trial commenced on February 5, 1991. The jury returned a conviction on March 7, 1991. The jury declined to recommend the death penalty on March 15, 1991. Sentencing is scheduled for June 12, 1991.

The investigation began in the fall of 1988 when the late Robert Parker approached the IRS and offered to cooperate against Cooper. Parker identified himself as Cooper's "paper man" and claimed he (Parker) was responsible for handling the paperwork regarding Cooper's assets. Parker had intimate knowledge not only of Cooper's extensive assets, but also of his narcotics operation, and he shared all of this information with agents from the IRS and DEA.

In summary, Parker informed agents that since the early 1980s, Cooper has operated a large street-level heroin and cocaine distribution organization. Cooper's operation started small, with sales primarily on one street corner located at 79th Street in Chicago, Illinois. Cooper's operation expanded to include between six and eight different locations, mostly on 79th Street, with employees numbering between 20 and 30. In 1984, Cooper hooked up with Jeff Fort and the "El Rukns." In exchange for El Rukns muscle, Cooper shared with the El Rukns his expertise in cutting, packaging and distributing heroin and cocaine. Cooper and Fort split the profits from the heroin and cocaine distribution evenly. Cooper's relationship with the El Rukns lasted until 1988. While he was associated with the El Rukns in the drug business, Cooper continued to operate his own narcotics organization.

Based on the information provided by Parker, the U.S. Attorney for the Northern District of Illinois was able to identify eleven

properties owned by Cooper, including a 19-unit apartment building in Gary, Indiana, and a restaurant located on South Martin Luther King Drive in Chicago. Working with Parker, the government developed an undercover operation in which Parker provided advice to Cooper and other drug dealers concerning the handling of their assets. The counseling service was to be provided from an undercover office that was rented at the Doral Plaza on Michigan Avenue. The government also rented an apartment in the same building. Parking made some recorded phone calls from the undercover office to Cooper and others. In addition, Parker had meetings with Cooper's associates at the office, and the meetings were videotaped.

On February 7, 1989, Robert Parker, a government informant, was found shot to death, with five bullet wounds to the head and upper body. Based on direct and circumstantial evidence, on March 7, 1991, the government successfully proved to a jury that Alexander cooper hired Anthony Davis to execute Robert Parker because Cooper knew Parker was cooperating with the federal government in the investigation of Cooper's drug organization.

In United States v. Pretlow, the United States Attorney for the District of New Jersey charged Pretlow with the killing of a cooperating government witness and another criminal associate, a 16-year-old girl. Pretlow beat to death with a hammer the government informant and potential witness, dismembering the body after the murder. The motive for the murder was to prevent the informant from testifying against Pretlow concerning Pretlow's drug organization. Pretlow shot the 16-year-old girl to death because he believed that she was informing the police about his narcotics enterprise. Pretlow committed both murders in an attempt to maintain his cocaine distribution and importation enterprise, a violation of 21 U.S.C. § 848(a), and agreed to a stipulated sentence of mandatory life imprisonment in exchange for the government dismissing the death penalty count against him. The United States Attorney for the District of New Jersey directed his request for permission to dismiss the death penalty to the United States Attorney General. Request to dismiss the death penalty was denied by the Attorney General in March 1991. This case is presently in the pre-trial stage. It is anticipated that the trial date will be in September 1991.

In United States v. Pitera, the United States Attorney for the Eastern District of New York has charged Thomas Pitera with the murder of nine (9) criminal associates, two of which murders occurred after the effective date of the death penalty provisions of 21 U.S.C. § 848(e). Pitera headed a "crew" within the Bonanno Organized Crime Family. Pitera's crew obtained substantially all of their income from the trafficking of cocaine, heroin and marijuana, operating their own importation and distribution enterprise, as well as stealing drugs and money from competitors. All of the murders, with the exception of one murder of vengeance, constituted attempts to eliminate competitors in the drug distribution underworld of New York, attempts to kill other drug

dealers to steal their drugs and money, or attempts to kill criminal associates whom Pitera suspected of being police informants. Most of the murders involved the torture of the victims and the dismemberment of their bodies. As of May 3, 1991, 11 co-defendants have pled guilty. The prosecution against Pitera is pending and trial is anticipated by the fall of 1991.

In United States v. Chandler, the United States Attorney for the Northern District of Alabama charged David Ronald Chandler with the murder of a police informant and with the murder of two individuals whom Chandler believed stole marijuana from his fields. Chandler operated a substantial marijuana cultivation, importation and distribution enterprise out of the northern part of Alabama, that included operations in four other states. Chandler's brutal methods of enforcement included attempts to murder a local police chief. Chandler's control over this rural part of Alabama made local prosecution difficult and unsatisfactory.

Trial commenced before a federal jury on March 19, 1991, and Chandler was found guilty on April 2, 1991. The federal jury recommended the death penalty on April 3, 1991. Sentencing is scheduled for May 14, 1991.

In United States v. Villarreal, et al., the United States Attorney for the Eastern District of Texas has charged three defendants with the brutal murder of a state trooper who had discovered bags of marijuana in the trunk of the defendants' car after a routine traffic stop. The defendants were attempting to transport 29 pounds of marijuana from Houston, Texas, to some location in another state. When the police officer stopped them in a routine traffic stop, he obtained permission to open the trunk. As he was questioning the defendants about the bags, all three defendants attacked the officer, pulling him to the side of the road, stabbing him in the face with a screwdriver, and shooting him in the head with the officer's own service revolver. The entire stop, discovery of marijuana and murder was captured by a video camera mounted in the officer's patrol car, which the officer had turned on prior to getting out of his car.

The defendants were apprehended within 48 hours. The bags of marijuana were recovered from a nearby wooded area; the officer's flashlight and billfold were discovered next to the bags of marijuana. The local prosecutors have requested federal intervention due to local political and social pressures and their relative inexperience in prosecuting such serious charges, as well as the need for the devotion of the greater resources available at the federal level. The United States Attorney for the Eastern District of Texas has commenced pretrial motions in this case. Under consideration at this juncture of this case is a motion for change of venue filed by the defense. A ruling is expected by May 10, 1991.

In United States v. Havier LeBron and James Davis Louis, a federal grand jury sitting for the Eastern District of Pennsylvania,

Philadelphia, Pennsylvania, indicted the defendants under 18 U.S.C. §§ 1512, 371 and 1958. The defendants were charged with the murder of aa grand jury witness. On April 30, 1991, a federal jury acquitted LeBron and Louis on the § 1512 count and rendered a verdict of guilty on the §§ 371 and 1958 counts. Since the death penalty counts resulted in acquittals, the jury was never requested to consider the death penalty issue.

QUESTION 52: How many investigations have been undertaken by the multi-jurisdictional task force program entities? How many have resulted in criminal indictments or information? Of these, how many were settled/pled prior to trial? How many resulted in convictions? How many resulted in acquittals at trial?

(NOTE: The answer below addresses separately the DEA State and Local Task Force Program and OCDETF Program. Because there is some overlap, these data sets cannot be combined.)

ANSWER: As the Attorney General recently reported to the Congress in the 1989-1990 Report of the Organized Crime Drug Enforcement Task Force Program (May 8, 1991), the task forces opened 3,486 investigations between FY 1983 and FY 1990. These investigations have resulted in 8,534 indictments and information, charging 28,713 persons. Thus far, 16,302 convictions and sentences have become final; pending cases, including cases in which a conviction or sentence is being appealed, are not considered final and are not included. Only 2,634 acquittals or dismissals of all charges have occurred.

In FY 90, the DEA State and Local Task Force program initiated 5,303 cases. Please note that cases refers the number of investigations opened without regard to the number of defendants charged in any one case. The actual disposition of all of those cases is not available at this time.

DEA's State and Local Task Force Programs does maintain an annual calculation of judicial disposition of Task Force defendants. However, is must be understood that dispositions reported in FY 90 do not necessarily correspond directly to cases initiated in FY 90, due to normal lag time in the judicial processing of defendants from arrest to final disposition.

With this caveat, in FY 90 DEA State and Local Task Forces reported in 4,434 convictions (72% of total dispositions), 121 acquittals (2% of total dispositions), 634 declinations (10% of total dispositions), and 971 dismissals (16% of total dispositions).

QUESTION 53: The Administration has recommended additional mandatory minimum sentences in its recently submitted crime bill. Has the Department solicited the views of the Federal judiciary on the impact which mandatory minimums are having on their sentencing decisions? Please provide the Committee with copies of any communications (solicited or unsolicited) which the Department has received from Federal judges over the last year on this issue.

ANSWER: Department officials most closely involved in the area of sentencing policy are well aware of the views of the Federal judiciary on the impact of mandatory minimum sentences. The Department received a letter dated July 23, 1990, from Judge Edward R. Becker on the subject of mandatory minimum sentences (copy is enclosed in Appendix III). We do not believe that we have received other correspondence from Federal judges on this topic in the last year. However, to the extent a letter on this topic was not indexed under terms relating to mandatory minimum sentences, we would have no ability to identify it for retrieval.

QUESTION 54: How many criminal referrals has the Department received from the Department of Commerce for violation of the Anti-Boycott Act during the past ten fiscal years? How many of these were declined and for what reasons?

ANSWER: The Department has received two criminal referrals for violation of the Anti-Boycott Act during the past ten fiscal years. Both cases were declined because the evidence did not establish a criminal violation of the Act.

QUESTION 55: Does the Department support the National Institute of Justice's adoption of the .03 performance standard for personal protective body armor? If so, does the Department support mandatory Federal performance standards in the absence of voluntary compliance by the manufacturers?

ANSWER: Although several manufacturers contend that it is too rigorous, most of the industry and law enforcement professional associations continue to support the .03 standard.

NIJ's standards and testing program assists law enforcement agencies and security personnel in choosing protective garments that best meet their safety needs. Manufacturers whose garments pass rigorous tests against the NIJ standard in an independent NIJ-approved laboratory may label their product as complying with the NIJ standard, once they receive written notice to that effect.

Unfortunately, some manufacturers have represented their products or certain product lines as complying with the NIJ .03 standard when they do not. Because of this, NIJ issued two notices via the National Law Enforcement Telecommunications System (NLETS) to alert law enforcement professionals to potential safety problems. These are isolated instances, to be sure, and hardly compare with the number of lives saved by wearing body armor. The Department of Justice does not believe that mandatory performance standards are necessary.

QUESTION 56: Does the Department support drug testing of students attending institutions of higher education that receive Federal funds?

ANSWER: The Department supports the Administration's view that while drug testing in certain situations is essential, universal drug testing (to extend to college students) is not necessary. Under current law, institutions of higher learning must have a clear drug policy with sanctions that apply to faculty, staff, and students. Non-compliance by the school can result in a range of sanctions from the loss of Federal technical assistance to the loss of all Federal grants.

There are also meaningful sanctions available that impact directly on the student population. Upon conviction of drug trafficking or possession offenses, students can lose Federal benefits such as student loans. Also, as demonstrated by the University of Virginia case, seizure and forfeiture provisions will be applied to drug law violators.

QUESTION 57: How many Federal criminal prosecutions have been brought as a result of investigations conducted in whole or in part by the Offices of the Inspectors General in the past five fiscal years? Does the Department support full police powers for these criminal investigators?

ANSWER: The Office of the Inspector General (OIG) in the Department of Justice was established on April 14, 1989. Since that time, the following federal criminal prosecutions brought as a result of investigations conducted in whole or in part by the OIG are as follows:

4/14/89 - 9/30/89	62
10/1/89 - 9/30/90	155
10/1/90 - 4/30/91	63

The Department of Justice's OIG is responsible for the conduct of criminal and other investigations of agency employees, contractors, grantees, other recipients of federal funds and guarantees, as related to Departmental programs and operations. Additionally, it is the position of the Department that the OIG also have criminal investigative authority in connection with, and in support of, their function to investigate instances of waste, fraud, abuse, and misconduct within the programs and operations of the Department of Justice.

The Department's view is that the needs of Inspectors General for law enforcement authority can be met by deputizing IG investigators as Special Deputy United States Marshals. The Department's policy permits the extension of criminal law enforcement authority to inspector general personnel in executive agencies on a case-by-case and agency-by-agency basis.

QUESTION 58: How many cases have been prosecuted and indicted under the Computer Crime Act? Does this statute need to be strengthened or improved?

ANSWER: Pursuant to 18 U.S.C. § 1030, the Department of Justice (FBI) and Department of the Treasury (Secret Service) have concurrent investigative jurisdiction over computer crime cases. For fiscal year 1990, we had five new filings (two indictments and three information) and seven dispositions (six felonies and one misdemeanor). The Treasury Department does not track § 1030 offenses but does track all cases where, regardless of the crime charged, a computer is central to the offense. It reported that 64 cases were prosecuted in FY 90. It should be noted that due to increased efforts in this area, the number of prosecutions regarding computer-related offenses should grow dramatically.

The primary computer crime statute, 18 U.S.C. § 1030, needs to be both strengthened and improved. Deputy Assistant Attorney General Mark M Richard has testified before the House Judiciary Committee, Subcommittee on Crime, and the Senate Judiciary Committee, Subcommittee on Technology and the Law, to support needed amendments to this statute. As our experience grows in this area, we continue to reevaluate both the statutory language and existing penalties of § 1030 and we will propose modifications where appropriate.

QUESTION 59: How many adoptive forfeiture proceedings have been brought by the Department in the past five fiscal years in which state and local governments utilize Federal forfeiture procedures to forfeit assets seized in state investigations and prosecutions? How much money was forfeited in each of these proceedings and how much of it was turned over to the states and localities? Please provide an individualized breakdown of the monies transferred to each state or local government agency and how much time the forfeiture procedure took.

ANSWER: Our information management system does not record the number of adoptive forfeiture proceedings conducted in the past five fiscal years. Our new system, which will be operational by mid-fiscal year 1993, will be capable of providing that data. As to adoptive cases accepted prior to September 1, 1990, 90% of the proceeds were returned to the State or local seizing agency. For cases adopted since September 1, 1990, the sharing rate is 85% in uncontested cases and 80% in contested cases. Although a majority of sharing cases involve adoptions, it is the joint investigations described below which account for most of the money shared as most adoptive cases involved motor vehicles or small amounts of cash (e.g. $2,000 or less).

Adoptive forfeiture is one of two methods by which State and local law enforcement agencies may equitably share in federal forfeitures. In the second method, the State or local agency works with a federal law enforcement agency in a joint investigation. At the conclusion of the forfeiture, the State or local agency shares in the next proceeds directly proportional to its contribution to the case, i.e. if a city police department does half the work, it receives half of the net forfeiture proceeds.

The Department tracks net income and equitable sharing. Equitable sharing is further broken down as cash shared and value of tangible property shared. Three charts are attached to assist the Committee in analyzing this data.

Enclosed in Appendix IV are tables reflecting equitable sharing disbursements by State and judicial district. Our information management system does not record the time expended on the forfeiture procedure. We ask State and local agencies to allow six months from seizure to sharing in uncontested cases and eighteen months from seizure to sharing in judicial cases. We are increasingly able to process cases more quickly as we secure additional appropriated positions for asset forfeiture work.

Drug Treatment and the Bureau of Prisons:

QUESTION 60: How will the Department fund the additional cost of expansion to meet the growing need for drug treatment in the BOP population and comply with the articulated expansion plan?

ANSWER: The Federal Bureau of Prisons will continue to conduct needs assessments for all offenders entering the system on a periodic basis. These assessments enable the Bureau's staff to determine patterns of treatment needs of those individuals entering the system, with substance abuse or dependency histories. In accordance with those findings, the Department will request appropriate resources from the Congress to assure the availability of adequate and sustained appropriations. Appropriations for the expansion of treatment programs must be consistent with assessed and projected need.

In FY 1992, the Department requested for the Bureau of Prisons an additional 100 positions and $11,948,000 in additional funding for direct treatment activities (this figure does not represent training, testing, and other indirect costs). These funds will allow the Bureau to expand the comprehensive residential program to about 50 percent of all Federal institutions, providing about 3,500 treatment beds, and will provide transitional services to up to 1,000 inmates.

QUESTION 61: Please provide the number of referrals to the Department of Justice from EPA for environmental prosecutions from fiscal year 1988 to the present. Of those referrals, how many has the Department declined?

ANSWER:

	EPA REFERRALS	EPA REFERRALS DECLINED
FY91	100	20
FY90	66	19
FY89	62	23
FY88	56	11

TOTAL	284	73

These figures are for criminal prosecutions under the pollution control statutes. They do not include civil cases, nor do they include cases, civil or criminal, brought under the wildlife protection laws. The Department also prosecutes environmental crimes on the basis of FBI investigations where there have been no referrals from EPA.

QUESTION 62: BOP has indicated that it will be able to provide treatment to 4800 offenders annually by FY '95. Are there any completed/documented studies of the completion rate of inmates participating in the BOP drug treatment programs? If yes, please provide each study.

ANSWER: The Bureau of Prisons even now provides drug treatment services to far more than 4800 offenders annually. The figure of 4800 refers to the number of treatment slots that the current Bureau of Prison's strategy requires through FY'95, for nine-month intensive residential programming. The number of offenders eligible for such programs is subject to change due to a variety of fluctuating factors, such as: percentage of offenders entering the system with drug abuse problems; volunteerism rates; and median sentence length of the offender. In the foreseeable future, however, it is reasonable to expect that this segment of the inmate population will continue to increase.

Unfortunately, it is simply too early to obtain any meaningful information regarding program completion rates. The programs have not been in operation for a sufficient period of time to provide this data. However, we have contracted with NIDA to help us provide this data in the future.

QUESTION 63: Have there been any independent evaluations or studies of the effectiveness of BOP drug treatment programs commissioned by the Justice Department? What determinations has the Department made regarding the impact of BOP drug treatment on recidivism rates?

ANSWER: An interagency agreement was reached with the National Institute on Drug Abuse (NIDA) in March, 1990, in order to fund a long term outcome evaluation for offenders completing these programs. Due to the recent implementation of the Bureau of Prison's drug abuse programs, there has been insufficient time, as yet, to evaluate the outcome. We expect this evaluation to yield valuable information including information on recidivism rates and effectiveness of drug treatment programs with the prison population in the months and years ahead.

QUESTION 64: Please provide any studies by the Department or undertaken on behalf of the Department that address the effectiveness of drug treatment on the prison population. If no

such studies exist, please provide whatever outside studies the Department has utilized for its programs.

ANSWER: Through the support of the National Institute on Drug Abuse, the Department is currently undergoing a long-term evaluation of its most recently implemented Drug Abuse Treatment Programs.

Prior to the Bureau of Prison's recent drug programming implementation (October 1989), a thorough review of existing and on-going research was conducted to determine new and effective models of institutional drug treatment programming.

The review of this research revealed the success of drug abuse treatment programs, specifically with institutionalized correctional populations (Simpson, 1984, Hubbard, Rachal, Craddock & Cavanaugh, 1984; DeLeon, 1984). Underscoring these findings is a recent evaluation of the New York Prison Program, "Stay'n Out", (Wexler, Falkin & Lipton, 1988.) The "Stay'n Out" evaluation found that incarceration can provide a necessary period of abstinence for the offender, possibly for the first time. This abstinence provides the opportunity to get the offender's attention long enough for actual treatment participation to occur, including drug education, therapy, and developing life skills and coping skills in a structured and supportive environment.

Gendreau and Ross (1987) conducted an extensive review of the research literature and found that a number of programs conducted in the 1970's had been shown to effectively reduce recidivism, sometimes by as much as 80 percent. These results were reported by both community and institutional corrections. More recently the Cornerstone Program in Oregon has published a three year outcome study that indicates that a decreased incidence of arrests, convictions and reincarceration is directly proportional to the length of time in treatment (Field, 1985; Field, 1989).

Research further indicates that a range of services needs to be designed and integrated into correctional systems. Frohling (1987) and Vigdal (1990) suggest that these services should include: Assessment; Self-help Groups; Drug Education; Counseling; Comprehensive Drug Treatment; Intensive Structured Environments (Therapeutic Communities); and Aftercare Programming.

These are but a few citations of the research that the Bureau of Prisons reviewed prior to implementing its drug treatment program. As you review the Bureau's implementation strategy and program strategy, you will find that the Bureau's Drug Abuse Education and Treatment Program effort has been developed on a well-informed theoretical basis, as well as an eye to practical application within our institutions.

REFERENCES

Field, G., "The Cornerstone Program: A Client Outcome Study", Federal Probation, 49. 1985.

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Vigdal, G., "Comprehensive Aseessment, Diagnoeis and Classification: Treatment Matching of Substance Abusing Offenders", Unpublished paper. Wisconsin Department of Corrections, Madison, WI: 1990.

Wexler, H., Falkin, G., & Lipton, D., "A Model Prison Rehabilitation Program: An Evaluation of the Stay'n Out Therapeutic Community" A Final Report by Narcotic and Drug Research, Inc. National Institute on Drug Abuee. Rockville, MD: 1988.

The National Institute on Correctione (NIC) has not undertaken any independent evaluatione or studiee that addrese the effectivenees of drug treatment in the prison population. NIC's emphasis is mainly in the areae of technical aeeistance and training to State and local correctional agencies. The focus of these services has been management, operational, and systematic issuee, i.e. planning and implementing programs on the State and local levels.

However, NIC has provided several training programs through its National Academy of Corrections (NAC) in Boulder, Colorado in the area of eubstance abuse. In 1990 the NAC provided a seminar entitled Substance Abuse Programming in Custodial Institutions, and in 1991 it offered a seminar entitled A Systems Approach to Managing the Substance Abuse Offender. In each of these seminars, the NAC prepared training manuale which included (for informational purposes)

reports on studies that address the effectiveness of drug treatment in the correctional setting.

Some of the reports provided in the seminar training manuals included:

Outcome of Narcotic Addict Treatment in California, M. Douglas Anglin, Ph.D. and William H. McGlothlin, Ph.D.

The Cornerstone Program: A Client Outcome Study, Gary Field, Ph.D., Cornerstone Program, Oregon State Hospital

The Effects of Intensive Treatment on Reducing the Criminal Recidivism of Addicted Offenders, Gary Field, Ph.D, Alcohol and Drug Services Manager, Oregon Department of Corrections, May 1989

A Model Prison Rehabilitation Program: An Evaluation of the "Stay'n Out" Therapeutic Community, A Final Report to the National Institute on Drug Abuse, August 31, 1988, Harry K. Wexler, Ph.D., Gregory P Falkin, Ph.D., Douglae S. Lipton, Ph.D. and Andrew B. Rosenblum, Ph.D., Linda P. Goodloe, Ph.D.

Drug Abuse Treatment Evaluation: Strategies, Progress and Prospects, NIDA Research Monograph 51, Editors Frank M. Time, Ph.D. and Jacqueline P. Ludford, M.S.

Substance Abuse Treatment Program Evaluations of Outcomes and Management Report, Division of Management and Budget Planning and Research Section, Washington State Department of Corrections, April 1988

Comprehensive Substance Abuse Treatment Program, State of Florida Department of Corrections, January 1990

Proposal for Evaluation of the Federal Bureau of Prison's Drug Treatment Programs, Bernadette Pelisaier, Ph.D., Federal Bureau of Prisone Research Department, Butner, N.C. and Dan McCarthy, Federal Bureau of Prisone, Office of Research and Evaluations, Washington, D.C.

[Copies of these reports are available in the NIC office]

In addition, NIC participated in a Substance Abuse Task Force. The Task Force was initially formed by an Interagency Agreement between the National Institute of Correctione, the Bureau of Prisons, the Bureau of Justice Assistance and the Office of Justice Programs. Joining these agencies later were the Department of Health and Human Servicee, the Office of National Drug Control Policy, representativee from each of varioue corrections components, and leaders in drug treatment and reeearch.

The goal of the Task Force is to provide guidance and information to assiet State and local correctional agencies in eetabliehing

effective substance abuse strategies. The report is expected to be available in June, 1991 and will cite a variety of self-reported drug programs.

An outside study, "Survey of Drug Treatment Programs" (108743), is also being conducted by GAO. It is still in progress.

QUESTION 65: According to the letter (dated 3/20/91) from BOP Director Quinlan, the current BOP strategy provides sufficient number of residential treatment slots in BOP facilities to treat the projected number of offenders who will need treatment through FY '95. How many staff positions will be required to operate these facilities?

ANSWER: In order to provide residential treatment to 4800 offenders annually, approximately 200 treatment professionals are required. This represents an increase of 50 positions above the level (150) requested for FY 1992. This is the number of psychologists and drug abuse treatment specialists required to operate these program units.

QUESTION 66: Has BOP explored the possibility of contracting out for these services to existing treatment professionals? What would be the difference in cost between a BOP staffed and operated residential treatment program and the cost of contracting out for such services?

ANSWER: Our current strategy has considered a variety of options for providing drug treatment services. A substantial portion of our Transitional Services component, or aftercare, will very likely be provided by private contractors over the next several years.

The Bureau of Prison's in-prison, residential treatment costs, on a "per inmate" basis, are approximately equal to like-programs that use ex-addicts and ex-offenders as treatment providers. However, the Bureau of Prison's programs are staffed, operated and supervised by licensed psychologists and drug treatment specialists.

Also, there are reasons beyond cost that the Bureau of Prisons operates treatment programs with its own staff. Using its staff to provide direct services provides career opportunities to personnel who may later end up in management positions. Additionally, operating programs with bureau staff allows us to ensure that control and security concerns are adequately addressed.

QUESTION 67: Please provide the number of residential treatment slots the Department will have available in FY '93 and FY '94.

ANSWER: In FY 93, the current strategy calls for having a total of approximately 4000 treatment slots available. In FY 94, approximately 4400-4500 slots will be available for residential treatment programs.

Again, the strategy is dynamic, and other factors may modify these numbers.

Environmental Crimes:

QUESTION 68: Please provide the number of criminal prosecutions of the Anti-Boycott Act for each of the past ten fiscal years. What section of the Department has responsibility for the enforcement of this act and how many attorneys are so assigned? For each prosecution, please provide the disposition of the case.

ANSWER: There have been no criminal prosecutions for violations of the Anti-Boycott Act during the past ten fiscal years. As noted in the response to question 54, two referrals from the Department of Commerce were declined. The Internal Security Section of the Criminal Division has responsibility for the oversight of any prosecution for violation of the Act. At present, there are two attorneys in our Export Control Enforcement Unit who supervise enforcement of the Act and other statutes unrelated to the Act.

QUESTION 69: Please provide copies of any memoranda of understanding or any similar agreements between components of the Department and any other agencies, including the EPA, regarding investigations of environmental crimes.

ANSWER: See attached Memorandum of Understanding between EPA and FBI. The Memorandum of Understanding between the EPA and the FBI on referral and investigation of environmental matters is enclosed as Appendix V.

QUESTION 70: Please provide the number of attorneys in the Department devoted exclusively to the prosecution of environmental crimes during each of the previous five fiscal years.

ANSWER:

FY91	31
FY90	25
FY89	23
FY88	19
FY87	19

QUESTION 71: Please provide the number of agents in the FBI devoted exclusively to the investigation of environmental crimes during each of the previous five fiscal years.

ANSWER: The FBI's resource commitment to investigate environmental crimes has risen steadily from 11.6 Direct Agent Workyears (DAWYS) in FY 1986, to approximately 46 DAWYS at the end of FY 1990. Currently, the FBI is expending approximately 54 DAWYS (annualized) in environmental crime matters. (See the chart below for a five-year comparison)

The Department first sought resource enhancements for the FBI to address environmental crimes through the FY 1989 budget process. Continued growth in this area in the short term will be contingent upon the availability of resources from within the FBI White-Collar Crimes Program.

	FY 1986	FY 1987	FY 1988	FY 1989	FY 1990
DAYS	11.6	1[illegible]	21.9	28.2	45.9

QUESTION 72: Please provide the number of prosecutions, by statute, of environmental crimes for fiscal years 1985 through the present. For each prosecution, please provide the outcome, including the number of convictions and the sentences imposed.

ANSWER: We are not able to individualize convictions to one specific statute at this time. Appendix VI contains a summary of environmental crime convictions since FY 1983.

QUESTION 73: Please provide the number of environmental criminal cases opened during each of the last three fiscal years, regardless of their outcome, as well as the anticipated number of cases which will be opened during each of the next two fiscal years.

ANSWER: The number of environmental criminal cases opened during the last three fiscal years and thus far in this fiscal year are as follows:

FY88	91
FY89	102
FY90	116
FY91	144 (we expect 50 more by the end of FY 91)

The number of environmental criminal cases filed in future years will depend on the quantity and quality of investigations, prosecutorial resources, and other factors.

QUESTION 74: Please provide the number of environmental criminal cases handled by the FBI during each of the last three fiscal years, regardless of outcome, as well as the anticipated number of cases the Bureau will handle during each of the next two fiscal years.

ANSWER: From a case management standpoint, the FBI tracks pending investigations, by office of origin, that being the FBI field office in charge of the investigation.

At the end of fiscal years 1988, 1989, and 1990, the FBI had 179, 240, and 300 environmental crime investigations pending. These investigations include those matters independently investigated by the FBI and those matters investigated jointly with the

Environmental Protection Agency and other Federal, state and local enforcement agencies.

The FBI anticipates that the number of environmental crime matters will continue to grow for the next several years. There are many factors that contribute to this expectation of continued growth. Some of the growth can be attributed to training initiatives that are provided to FBI field offices throughout the country. As a result of providing basic "HOW-TO" investigative training, (which is attended by Agents from the FBI, other Federal, state and local agencies), investigators are developing expertise in the identification and investigation of these matters. While the Agent's level of expertise has evolved, so has the expertise and interest level of many of the United States Attorney's Offices throughout the country.

Other contributing factors to this growth trend include: a greater public awareness/sentiment towards the aggressive enforcement of environmental laws; public speeches by President Bush, Attorney General Thornburgh and members of Congress vowing stricter criminal environmental enforcement; and the Attorney General's Economic Crime Council recently identifying environmental crimes as a priority investigative matter.

Drug Enforcement Administration and Controlled Substances:

QUESTION 75: How many civil actions have been brought under Section 6486 of the Anti-Drug Abuse Act of 1988 authorizing up to a $10,000 fine for possession of a personal use amount of a controlled substance, and what were the dispositions of those cases?

ANSWER: There have been no cases brought to date since the Act requires the issuance of regulations, the setting of procedures and the hiring of Administrative Law Judges before proceeding further. The final regulations have only recently been completed and published at 56 Fed. Reg. 1086 (January 11, 1991), with an effective date of February 11, 1991. The other objectives must be completed before the program goes forward.

For instance, the Act did not contain an appropriation of funds to implement 21 U.S.C. § 844a; therefore, a source for funding must be identified for the resulting administrative activities. Such funding is expected to be identified in the near future. In addition, the Office of Personnel Management advised that although existing Administrative Law Judges have been located, procedures have not yet been completed to ensure they are ready to hear cases on an as needed basis.

Six United States Attorneys' offices have recently been selected as pilot Districts to implement the Program by the Department: District of Arizona, District of Massachusetts, WEstern District of New York, Eastern District of Pennsylvanie, Middle District of

Pennsylvania, and Western District of Pennsylvania. The Eastern District of Pennsylvania is already working with local District Attorneys' representatives to establish criteria for referral of cases by the local authorities for prosecution. A request for a grant to fund a joint program between the two offices in which an Assistant District Attorney and an investigative officer would be employed full-time in the United States Attorney's office to initiate formal civil actions under the Civil Penalties Program has already been submitted to the Bureau of Justice Assistance.

QUESTION 76: How many full-time DEA agents have been devoted to the Foreign Cooperative Investigations Program for the previous five fiscal years? How many are allocated to the program for FY 92?

ANSWER: This response is specific to the Foreign Cooperative Investigations Program (FCIP) decision unit as it is defined in DEA's 92 Budget document. As we have previously stated, the FCIP Decision Unit does not necessarily include all resources dedicated to DEA's foreign program. These permanent/full-time agents are supplemented by TDY agents from other operations within DEA.A n increase of 12 agents positions is requested for the FCIP in 1992. This will bring the 1992 total to 204 agents.

The number of full-time agents devoted to the FCIP during the last five years are as follows:

YEAR:	NUMBER OF AGENTS:
1991	192
1990	174
1989*	258
1988*	253
1987*	249
1986*	241

* During these years (1986-89), FCIP and Special Enforcement Operation/Program decisions units were not separated. However, beginning in 1990, these program resources were listed separately under the two decision units. This reflects a modification of resource tracking methods and not a diversion of resources devoted to DEA's foreign investigative activities. International drug control remains a principal element of Special Enforcement Operations/Programs.

QUESTION 77: What has been the budget allocation for the Foreign Cooperative Investigations Program for the last five years?

ANSWER: The budget allocation for the FCIP over the last five years is as follows:

YEAR:	BUDGET ALLOCATION:
1991	53,289,000

1990	49,202,000
1989*	57,368,000
1988*	58,252,000
1987*	48,033,000
1986*	38,058,000

* During these years (1986-89), FCIP and Special Enforcement Operation/Program decisions units were not separated. However, beginning in 1990, these program resources were listed separately under the two decision units. This reflects a modification of resource tracking methods and not a diversion of resources devoted to DEA's foreign investigative activities. International drug control remains a principal element of Special Enforcement Operations/Programs.

QUESTION 78: In which countries has the Foreign Cooperative Investigations Program been operating in each of the past five years? In which countries will the program be operating for FY 92?

ANSWER: In FY 87, DEA maintained 66 offices in the following 46 nations:

FY-87

Argentina	Australia	Austria
Bahamas	Belgium	Bolivia
Brazil	Burma	Canada
Chile	Colombia	Costa Rica
Curacao	Cyprus	Denmark
Dominican Republic	Ecuador	Egypt
France	Germany	Greece
Guatemala	Haiti	Honduras
Hong Kong	India	Italy
Jamaica	Japan	Korea
Malaysia	Mexico	Netherlands
Nigeria	Pakistan	Panama
Paraguay	Peru	Philippines
Singapore	Spain	Switzerland
Thailand	Turkey	United Kingdom
Venezuela		

We added no new DEA offices in FY 88. In FY 89, we opened a DEA Country Office in Bridgetown, Barbados and a DEA Resident Office in Udorn, Thailand. We opened a DEA Country Office in Montevideo, Uruguay in FY 90, and a Resident Office in Freeport, The Bahamas. We will open new offices in FY 91 in San Salvador, El Salvador; Adana, Turkey; and Maracaibo, Venezuela, for a total of 73 offices in 49 countries. Our budget request does not propose the establishment of any new offices in FY 92.

QUESTION 79: What are the evaluative criteria employed by the DEA in selecting those countries to be included in the Foreign Cooperative Investigations Program?

ANSWER: The Department considers many factors when deciding whether to open or maintain a DEA office in a foreign country. The evaluative criteria include:

- The type and extent of illicit drug production in that country.
- The existence of drug trafficking organizations in that country.
- The amounts of illicit drugs produced in or moved through the country that are ultimately bound for the United States.
- The prevalence of drug money laundering.
- The amounts of precursor chemicals produced or transported through the country and the potential for diversion of those chemicals.
- The extent of existing drug law enforcement efforts in that country and the prevalence of drug-related corruption.
- The degree of U.S./host country cooperation.
- The allocation of DEA's existing resources within the region.
- The opinion of the Department of State and the United States Ambassador in the country as to the need for DEA resources in that country.
- The wishes of the host country government as to the presence of DEA resources.
- The availability of DEA manpower and funds to open a new country or resident office.

QUESTION 80: What are the factors used in deciding which countries will be the subject of intelligence research?

ANSWER: Intelligence research is conducted on countries that have the greatest drug trafficking impact on the United States. These countries are identified by analysis of drug trafficking patterns and indicators developed during routine enforcement activity and domestic intelligence programs. For example, the Heroin Signature Program and the Domestic Monitor Program, two intelligence programs, establish the region from which heroin originates and provides a perspective as to the extent of the threat to the United States. Today, Southeast Asian heroin poses the primary threat to the United States. To address this threat, Special Enforcement Programs and Special Field Intelligence Programs dealing with Southeast Asian heroin trafficking have been initiated, as well as analytical products dealing with that region of the globe.

QUESTION 81: How many "ice" laboratories have been seized since January 1989? Please provide the date, location, and street value for each seizure.

ANSWER: During 1989, there were no "ice" laboratories seized domestically by the DEA. During 1990, however, seven "ice" laboratories were seized. No "ice" laboratories have been seized by DEA during 1991 to date.

Date Seized	Location of Seizure	Street Value
January 12, 1990	Elk Grove, CA	$ 193,525.(b)
February 27, 1990	Carson City, CA	$6,804,250.(b)
April 18, 1990	Greensboro, NC	$ 18,075.(a)
June 5, 1990	Cameron Park, CA	$ 28,350.(a)
July 12, 1990	Rialto, CA	$ 56,700.(a)
		$3,402,000.(b)
July 25, 1990	San Dimas, CA	$1,135.000.(b)
October 24, 1990	Buena Park, CA	$ 32,250.(a)

* The street values are estimates based upon retail level price information ($250 per gram average) and either (a) the amount of "ice" seized or (b) the amount of "ice" capable of being produced based upon the chemicals on-hand at the laboratory site.

QUESTION 82: Has there been a change over the last year in the volume and pattern of cocaine trafficking and usage? Please provide statistical information about the trafficking patterns and usage trends for heroin and cocaine over the last two years.

ANSWER: We believe that cocaine trafficking patterns have changed during the past few years to include significant cocaine trafficking through Mexico, in addition to the traditional Caribbean routes. Seizures along the Florida coast came to more than 39 tons (36 metric tons) in 1990, a 22 percent increase over 1989. With respect to trafficking activity in the Caribbean, smuggling flights were encountered farther south in the Bahamas chain as was enhanced use of airdrops in the vicinity of Cuba, the Dominican Republic, Jamaica, and Puerto Rico. Along the U.S. Southwest border, seizures reported to El Paso Intelligence Center (EPIC) increased approximately 17 percent to 24.48 tons in 1990 over a comparable time period in 1989. Moreover, enhanced joint U.S./Mexico law enforcement initiatives in the northern sector of Mexico resulted in the more than doubling of cocaine seizures to 51 tons in 1990 compared to 24.7 tons (22.5 metric tons) in 1989. The effectiveness of the Northern Border Response Force (NBRF) forced many violators to relocate smuggling activity to the southern portion of Mexico and into Central America at year's end 1990.

Both the National Household and National High School Senior Surveys continued to reflect the downward trending in cocaine usage among the general population bases in recent years. According to the National Household Survey, the number of monthly users of cocaine declined from 2.9 million in 1988 to 1.6 million in 1990. Daily or almost daily usage increased, however, from 282,000 in 1988 to

336,000 in 1990. The National High School Senior Survey reported the use of cocaine within the past year decreased 5.3 percent in 1990, the lowest figure since 1975.

According to DEA's Heroin Signature Program which identifies heroin source of origin through an in-depth chemical analysis, 56 percent of the heroin analyzed by the DEA during 1990 was from Southeast Asia, compared to 14 percent in 1985. In other words, the proportion of Southeast Asian heroin analyzed by the DEA laboratory system has increased significantly during the past five years. Conversely, based on the number of samples analyzed, the percentage of heroin attributable to Southwest Asian origin declined from 47 percent in 1985 to 21 percent in 1990. Heroin of Mexican origin also declined from 39 percent in 1985 to 23 percent in 1990.

Domestic heroin seizures have increased substantially since the early to mid-1980's. From FY-82 through FY-87, the amount of heroin seized in any given year in the United States ranged from 515 to 968 pounds per year. During FY-88 and FY-89, a total of 1,824 and 1,714 pounds was seized, respectively. In FY 90, a total of 1,393 pounds has been confiscated.

One of the indicators of domestic heroin abuse is gauged by the Drug Abuse Warning Network which is administered by the National Institute on Drug Abuse, and which reports emergency room episodes from various major metropolitan areas, reported 46,019 heroin related emergencies in 1990. The data suggest a stabilizing of the number of instances at the high level attained in 1989 (46,816 mentions).

QUESTION 83: How many agents worldwide does DEA have devoted to Southeast Asian narcotics smuggling? Of these agents, how many are qualified at the highest levels of language skills for the region?

ANSWER: The Department's process for allocating DEA agents around the world does not specify the exact type of trafficking organization on which each agent will focus. Therefore, it is impossible to cite exactly how many DEA agents are devoted to investigations of Southeast Asian trafficking organizations operating around the world. We can, however, identify DEA's foreign offices, which by virtue of location, do focus virtually all enforcement efforts on Southeast Asian narcotics trafficking.

Thailand	25	Agents
Hong Kong	5	Agents
Burma	3	Agents
Australia	2	Agents
Japan	2	Agents
Korea	2	Agents
Malaysia	2	Agents
Philippines	2	Agents
Singapore	2	Agents
Total	45	Agents

Southeast Asian trafficking groups are a domestic priority as well. DEA has created enforcement groups in New York and Los Angeles to address exclusively Southeast Asian trafficking organizations, and other domestic DEA offices regularly initiate investigations against Southeast Asian groups operating in their areas of responsibility.

With regard to language skills, the chart below lists the number of DEA Agents who have tested at or above what DEA considers a working proficiency level in the listed Asian languages.

Thai	18
Chinese:	
Cantonese	5
Mandarin	2
Japanese	1
Korean	1
Vietnamese	1

QUESTION 84: How many DEA agents stationed in Thailand are fluent in Thai? Please provide the language scores for each agent stationed there.

ANSWER: There are 13 special agents who scored at or above the minimum proficiency level assigned to Thailand. (Note: This number is determined through testing of agents as part of DEA's Foreign Language Bonus Program.)

Listed below are the scores of DEA agents currently assigned to Thailand who were tested.

Number of Agents	Score
1	3
6	2+
6	2
2	1+
2	1
2	0

QUESTION 85: Please provide a detailed description of the Foreign Language Bonus Program. This should include the total number of agents tested for each language and dialect, the scores for each, and an explanation of the scoring system.

ANSWER: The Foreign Language Bonus Program provides DEA with a computerized method of determining its language assets, i.e., who is foreign language proficient, in which foreign languages, at what level is this proficiency and where are these employees located. The method allows DEA to better utilize their foreign language assets for operational purposes and strategic planning. It also provides a system of monetary bonuses and awards to employees who have attained a tested minimum proficiency or higher in a foreign language and utilize these skills for mission related purposes.

It is additionally designed to provide an incentive for employees with no critical foreign language skills to obtain such skills and for those employees with current critical foreign language skills to improve them.

The FLBP is structured as follows:

1. All employees must be tested for oral/speaking skills using a DEA equivalent to the Federal Interagency Language Roundtable (FILR) zero through five proficiency level rating system, except those with Foreign Service Institute resident training school test ratings less than one year old;

2. Substantial use will be documented by employees and certified by two levels of supervision;

3. Substantial use will be defined as approximately 25 percent of a work year;

4. Multiple language skill and use will receive extra bonus possibilities;

5. All DEA employees will be eligible;

6. In addition to a bonus system for proficiency and use, an awards system to reward "special use" by language qualified employees who have not used their skills up to the 25 percent level and to promote gaining additional foreign language skills will also be established; and

7. The maximum bonus percentage payable for one language will be 12 percent of base pay, with a 15 percent bonus possible for multiple languages. These payments are not subject to the maximum earning limitation.

Notifications related to DEA'S three-phase testing program, in which four testing agencies, the DLI, CIA, FSI, and FBI have or will have provided testing in 34 foreign languages for 959 employees, began July 16, 1990, and continued until April 1, 1991. The FY 91 yearly testing cycle will begin in July 1991. The Oral Proficiency Interview (OPI) was utilized as the test instrument administered to all employees to obtain accurate and valid language proficiency data. Appendix VII contains a breakdown of the number of special agents tested along with their particular language and related scores.

QUESTION 86: The DEA was devoting substantial personnel to closing down "ice" laboratories. Are there new patterns developing in terms of the location of "ice" laboratories? Is there an increase or decrease in the prevalence of "ice"? If the DEA has seen a decrease or plateau in "ice" usage, what programmatic adjustments have been made in terms of resource allocation?

ANSWER: Reporting indicates that California continues to be the principal location for domestic "ice" production. Of the seven "ice" producing laboratories seized to date in the United States, six of these laboratories were located in that State. The seventh, a dismantled, non-operational laboratory, was seized in North Carolina.

"Ice" availability and use are concentrated primarily in Hawaii and on the West Coast, principally California. During the past year or so, the availability of "ice" has increased somewhat in California. This increase in availability is attributed to the onset of domestic manufacture by laboratories operating within that State during 1990. Regarding Hawaii, DEA enforcement operations conducted in that State during late 1989 and early 1990 temporarily succeeded in substantially reducing the supply of "ice" available there.

QUESTION 87: Does the Department support Federally mandated multiple prescription programs? Are there any studies to indicate whether such program would impact upon diversion of illegal prescription drugs into the illicit market and how much such a program would cost?

ANSWER: The President's third National Drug Control Strategy recognizes that diverted pharmaceutical drugs contribute to the overall drug abuse problem our nation is facing. Under Office of National Drug Control Policy leadership, the Administration is reviewing means to monitor and control effectively the distribution of these drugs, and this review will include multiple copy prescription programs (MCPP). As an initial step, an HHS agency, the National Institute on Drug Abuse, is sponsoring a Technical Review, "Evaluation of the Impact of Prescription Drug Diversion Control Systems on Medical Practice and Patient Care: Possible Implications for Future Research." DEA will participate in this technical review to be held May 30-June 1, 1991.

Although the Administration's policy on MCPP is presently under review, these programs appear to be effective in two respects. First, in preventing pharmaceutical diversion (forgeries, fraudulent prescriptions, and illegal prescribing are eliminated or deterred) and, second, in aiding law enforcement and health authorities in targeting and investigating illegal activities by physicians, pharmacists, and fraudulent patients. DEA studied the programs extensively and produced a "Resource Guide," which documents many of the successful impacts. Seven programs have been in operation for more than 10 years. These states have created substantial records documenting the successful diversion reduction impact of the programs as a whole, and upon specific individual diversion and abuse problems.

Although state program costs have been examined, cost estimates for a Federally mandated system would vary greatly depending upon the scope of the program, the drugs covered, electronic reporting capabilities, and other pertinent factors. Additionally, a Federal

system may achieve savings from economies of scale. State recurring costs have ranged from 29 to 68 cents per prescription. There are 18 million Schedule II controlled substance prescriptions filled each year, thus indicating an approximate annual operating cost of $5.2 to $12.2 million for a Schedule II system. Schedule II prescriptions account for approximately 10 percent of all annual controlled drug prescriptions.

QUESTION 88: How many Colombian nationals are under indictment in the United States and how many outstanding extradition requests are presently pending?

ANSWER: The Justice Department does not maintain indictment statistics based upon the nationality of the defendants charged. DEA alone has identified approximately 500 Colombian nationals wanted for drug crimes in the United States. This list is headed by Pablo Escobar-Gaviria, considered the most wanted United States fugitive in Colombia and also would include much less important fugitives wanted for distribution of retail quantities of cocaine in the United States. If one were to add Colombian nationals wanted by other Federal, state and local jurisdictions, the figures could be in the thousands. Fifteen formal requests are currently pending before authorities in Colombia for the extradition of Colombian nationals to the United States.

QUESTION 89: What resources have been committed to enforcement of the Anabolic Steroids Control Act? What steps have been taken to transfer authority for steroid control to the DEA and to coordinate its efforts with those of the other government departments?

ANSWER: Since the February 27, 1991 effective date, two positions have been reprogrammed from DEA's existing Diversion Control Programs for dedication to the implementation of the Annabolic Steroids Control Act.

Existing resources are currently being utilized to register legitimate handlers of anabolic steroids and to conduct criminal investigations into the diversion and trafficking of anabolic steroids. Additional resources have been requested as follows:

DEA has led policy level discussions with representatives from the Federal Drug Administration, United States Customs Service, FBI, and United States Postal Service. A Memorandum of Understanding has been drafted outlining the working relationship between the DEA and FDA regarding implementation of the ASCA and transfer of responsibility for investigation of illegal distribution of anabolic steroids.

In light of the statutory changes placing anabolic steroids control in Title 21, primary responsibility for litigation will be with criminal prosecutors. It should be noted, however, that prior to the passage of the Anabolic Steroids Control Act, the Civil Division Office of Consumer Litigation was responsible for all steroids investigations. Up to this point, over 150 individuals

were successfully prosecuted for steroids trafficking under the Food, Drug, and Cosmetic Act and other federal criminal statutes. Jail sentences have been up to eleven years imprisonment and fines have been as high as $400,000. At the present time, there are approximately 200 investigation and prosecution matters that relate to real anabolic and counterfeit steroids as well as steroids-substitute drugs.

QUESTION 90: How did the DEA decide that personnel and financial resources should be devoted to transhipment countries? How were the five countries for FY 92 (Brazil, Chile, Colombia, Ecuador and Guatemala) selected? Are agents being diverted from other countries and/or programs in order to staff this project?

ANSWER: As outlined in our response to question 79, consistent with the National Drug Control Strategies, the Department employs a variety of evaluative criteria to determine how future resources should be allocated in its foreign program.

Agent staffing in the five listed countries is fundamentally based on the predominant threat cocaine continues to represent to U.S. drug control efforts, and the need to bring consistent pressure on the cocaine trafficking organizations throughout South and Central America.

We have long recognized the potential "balloon effect" that can follow successful drug enforcement efforts. Drug trafficking organizations have historically reacted to aggressive drug enforcement activity by modifying trafficking routes and methods of operation. Recent success in disrupting trafficking operations in Bolivia, Colombia, Mexico, and Peru.

Increased DEA agent staffing in Brazil, Chile, Ecuador, and Guatemala is designed to bolster the drug enforcement capability in those countries, and deter the potential entrenchment of trafficking organizations shifting from traditional operating areas. Colombia remains the base for some of the most sophisticated drug organizations in the world and continues to be a central focus of U.S. anti-drug efforts in Latin America.

The Department's FY 92 request is for new agent positions; no agents are being diverted.

QUESTION 91: What is the extent of diversion of illicit opium into the illicit market in India? In light of the Government of India's inability to decrease diversion of illicit opium into the illicit marketplace, does the DEA support modification or abolition of the 80/20 rule which governs illicit opium imports into the United States?

ANSWER: We in conjunction with the Department of State, have recently completed a report to be forwarded to Congress on "Licit Opium Imports" as required by § 2601 of the Crime Control Act of 1990. This report examines in detail the Indian licit opium

production/control system and the 80/ 20 rule. The report concludes that, while the Indian opium production system provides opportunities for diversion of licit opium, there is little hard evidence regarding the extent of diversion or that any such diversion reaches the illicit traffic outside of local domestic consumption. The Government of India has implemented broad control mechanisms to minimize such diversion and, in recent years, has significantly reduced the number of opium licenses issued, the acreage permitted, and stockpile reserves.

DEA is unable to document or quantify diversion of licit opium in India into the illicit marketplace. However, it is clear that there is substantial smuggling of opium into India which is unrelated to the licit production. Therefore, as covered in the above mentioned report, DEA does not support modification or abolition of the 80/20 rule at this time. DEA, in conjunction with Department of State will, as reported last year, continue to examine the supply, diversion and control trends over the next two years. At that time, unless intervening events dictate otherwise, a decision will be made to renew, modify or terminate the rule.

QUESTION 92: Does the DEA have any narcotics intelligence capabilities in Myanmar (Burma), and does the Department support some form of normalization of relations with that country to foster narcotics enforcement?

ANSWER: The U.S. Embassy in Rangoon includes 3 DEA special agents. A primary function of this office is the collection of narcotics intelligence from a variety of sources.

On March 1, 1991, the President submitted to the Congress his decisions regarding the certification on narcotics cooperation as contained in the International Narcotics Control Strategy Report (INCSR). The Department of Justice contributes to the development of the INCSR, which is prepared at the State Department. Burma was one of four nations denied certification. As part of our national heroin control strategy, the United States Government will continue to impress upon the Burmese government that we attach a high priority to the suppression of narcotics. That government, however, has yet to demonstrate a comprehensive, sustained interest in narcotics law enforcement.

On questions of formal international matters with other countries, the Justice Department defers to the Secretary of State. On an operational level, the Department's investigators and prosecutors look for assistance and cooperation in law enforcement from countries that are willing to provide it.

Dismantling Large-Scale Drug Trafficking Organizations:

QUESTION 93: One of DEA's primary responsibilities is the investigation of major narcotic violators who operate at interstate and international levels. Under the national drug

control strategy, the dismantling of large-scale drug trafficking organizations is targeted as one of four overall goals. The strategy also concludes that task forces -- with Federal, state, and local participation -- provide the best means to go after drug trafficking organizations. There are many task forces nationwide; however, little is known about how these task forces interrelate with other Federal and State investigative resources and how well we are progressing in dismantling drug trafficking organizations.

c. What is DEA doing to coordinate the interests of these task forces to ensure that we are systematically going after the largest drug trafficking organizations?

ANSWER: One of the components of the DEA Task Force Program has been the exchange of intelligence with State and local counterparts. Since the inception of the program 20 years ago, the systematic coordination of enforcement activities has been one of the basic elements in all DEA Task Force Agreements. DEA provides each Task Force Officer with access to DEA intelligence systems to ensure that all information is available to the investigator. The assignment of State and Local Officers to DEA's Task Forces also fosters the relationships with State and Local enforcement agencies and promotes a coordinated drug enforcement effort. The Department's internal policies concerning Class I and Class II violators directly influence the establishment of priorities in the Task Force Program. This ensures that all DEA efforts and Task Force efforts are geared toward the highest level of trafficker in a given geographic area.

b. If you believe that the United States is systematically attacking large drug trafficking organizations, where do we stand in each of the following areas:

(1) identifying the trafficking organizations, e.g., how many are there now versus one and two years ago?

ANSWER: Each Class I or II investigation represents a case in which DEA has targeted a major organization, or segment thereof, involved in the trafficking of illicit drugs or the diversion of legitimate drugs and essential chemicals to the illicit market. Through its Priority Targeting System, DEA identifies scores of organizations deemed to have the most significant impact on the illicit market in the United States. Resources are then devoted to and focused upon the dismantling of these organizations.

(2) putting trafficking organizations out of business, e.g., how many trafficking organizations have had key operatives arrested, prosecuted and convicted in each of the last three years and how many trafficking organizations ceased operations?

ANSWER: Numerous heads of organizations and key operatives within those organizations are immobilized each year in the United States or in foreign countries. Examples range from the arrest and prosecution of Carmelo "Meco" Dominguez, who headed one of the largest cocaine trafficking organizations in Bolivia, to the voluntary surrender of Ochoa family members and death of associate cocaine cartel leader Jose Gonzalo Rodriguez-Gacha in Colombia to the conviction of Brian Peter Daniels in the United States and subsequent dismantling of his Southeast Asian marijuana organization. Due to the fluid and expedient nature of drug trafficking organizations, however, a void in the trade can be quickly filled by remaining organization members or rival groups.

o. Has the DEA complained to DOJ about "turf battles" with Federal, State, or local agencies? Please detail.

ANSWER: DEA and all other components in the Department address potential and actual problems with other federal, state, and local agencies directly. There are no major issues which would be considered to be "turf battles."

QUESTION 94: The authority to seize and cause forfeiture of property, profits, and other assets of criminals is a powerful law enforcement weapon which Congress has continuously supported through legislation. According to the February 1991 National Drug Control Strategy, the Federal government in fiscal year 1991 transferred $240 million in assets to State and local law enforcement agencies.

a. How much did DEA seize in fiscal year 1991 and to what purposes does DEA use seized and forfeited assets? Are there plans to further expand this program?

ANSWER: DEA seized assets valued in excess of $1.1 billion in 1990, an increase of $121 million over 1989 seizures. Of these seizures, DEA has acted on requests for equitable sharing with State and local police totalling $181.6 million, a 21 percent increase over 1989.

DEA continues to increase its involvement in the Asset Forfeiture Program. In FY 90, DEA established Asset Removal Teams in each of its 19 Divisional Offices. These teams perform pre- and post-asset seizure functions. The teams consist of special agents, intelligence analysts, and contract employees.

Additionally, DEA has already begun expansion of its ADP capabilities with several pilot programs underway, all of which will be compatible with the Department-wide Asset Forfeiture Tracking System.

DEA has received $58.5 million from the Assets Forfeiture Fund to support forfeiture-related activities thus far in 1991. These funds are being used for a variety of asset management, forfeiture

program, and asset investigative expenses. The most significant include:

- o Cleanup of hazardous waste at clandestine laboratory seizures;
- o Costs to advertise seizures as part of the forfeiture process;
- o Purchase of ADP equipment for Asset Removal Teams;
- o Contracting for personnel to process and account for forfeiture cases, including miscellaneous expenses to support these personnel;
- o Training of DEA, international, state, and local enforcement personnel in forfeiture activities;
- o Refitting of forfeited vehicles for use in law enforcement purposes; and
- o Purchase of evidence and payment of awards to informants.

There are no current plans to expand the categories of forfeited assets that may be placed into official use. The use of proceeds from the Asset Forfeiture Fund is governed by 28 U.S.C. § 524(c). The use of such proceeds cannot be further expanded without changes to this legislation.

b. Do state and local agencies use forfeited assets received from the Federal government for law enforcement purposes only? Can transferred assets including proceeds from the sale of forfeited property be used for other purposes such as drug education and drug treatment?

ANSWER: In these lean fiscal times law enforcement agencies in some areas have come under pressure from their governing bodies to use shared monies for non-law enforcement purposes. The transfer or "pass-through" of share funds from a law enforcement agency to a non-law enforcement agency is not permissible. The Attorney General is only authorized to share federal forfeiture proceeds with the State or local law enforcement agencies that participated directly in the investigation or operation resulting in the forfeiture. As we are not authorized to share money with non-law enforcement agencies (or even with State or local law enforcement agencies which did not participate in the effort resulting in the forfeiture), we cannot accede to the pass-through of shared monies by recipient law enforcement agencies.

Shared funds may be used to support drug abuse education efforts conducted by law enforcement (e.g. "officer in the classroom" programs).

c. Does DEA's international operations include cooperating with foreign police and prosecutors to obtain seizure and forfeit of assets deposited in foreign countries by international drug traffickers? Is there an international component to DEA's asset seizure and forfeiture program?

ANSWER: The Criminal Division's and DEA's international operations do include cooperating with foreign police and prosecutors to obtain seizure and forfeiture of assets deposited in foreign countries by international drug traffickers. DEA has agents in foreign offices in over 40 countries who work daily with host government authorities on cases involving international drug traffickers. A central tenet of DEA's investigative emphasis against major trafficking organizations is the identification, seizure and forfeiture, wherever possible, of the assets maintained by those organizations. DEA and other Department officials regularly conduct seminars with local country law enforcement personnel on asset seizure and forfeiture, and meet with law enforcement personnel on specific cases involving the seizure of assets from international drug trafficking organizations. The DEA Office of Intelligence supports field personnel in all aspects of international money laundering investigations, and supports the DEA Operations Division in the coordination of specific money laundering operations.

During the past year, $203 million were seized from the Medellin and Cali Cartels alone. A financial task force has been established and equipped in Colombia to work in unison with DEA's multi-agency effort to attack the Cartels through their financial infrastructures.

QUESTION 95: The Subcommittee on Intellectual Property and Judicial Administration also heard testimony from the GAO that recommended consolidation of all DOJ and U.S. Customs non-cash seized asset management and disposition programs within the U.S. Marshals Service. Do you agree with this proposal?

ANSWER: We have been discussing the issues of Assets Forfeiture Fund management and consolidation with the Treasury Department. These discussions are still underway and we will continue to review the GAO's recommendations.

Treasury has told us that it changed contractors for its Customs Forfeiture Fund six months ago and that it believes that the problems with its prior contractor have been largely rectified. The Administration has not yet reached a final position on the issue of consolidation. We intend to arrive at a position in the very near future.

Firearms Policy:

QUESTION 96: Please provide the names and titles of the persons with whom the Department consulted in developing the agenda for the March 1991 "crime summit". Were groups and/or individuals outside of the Department solicited for ideas for the agenda? If so, please provide the names of those persons and organizations.

ANSWER: The Department consulted with many individuals in developing the agenda of the Crime Summit. One of the keys to the

Summit's success was the broad range of issues considered on the subject of violent crime during the three-day conference. The Department was benefitted by the diverse experiences and responsibilities of its personnel and their contacts in the national criminal justice community. Representatives from several components within the Criminal Division and the Office of Justice Programs, the Federal Bureau of Investigations, the Drug Enforcement Administration, the Bureau of Prisons, the U.S. Marshals Service, and the Executive Office of the United States Attorneys joined with individuals from the Offices of Attorney General, the Deputy Attorney General and Policy Development in identifying important topics and experts in various fields. This work began several months before the summit took place and many meetings were held to gather comments and suggestions.

The summit was designed not only to present information but to create a dialogue with criminal justice experts from all levels of government and the private sector in addition to community activists and victim groups. Over 100 individuals presided over discussions that included 700 participants. This structure provided a forum which maximized our ability to discuss and debate the issue of violent crime. Names of the panelists who individually developed their panel presentations and worked with the panel moderators in facilitating the open exchange of ideas and opinions include:

- Dr. Alfred Blumstein
  Dean, School of Urban and Public Affairs
  Carnegie - Mellon University

- Daniel Lundgren
  Attorney General
  California

- John Collini
  Eastern Regional Director
  Citizens for Law and Order

- Reuben M. Greenberg
  Chief of Police
  Charleston, South Carolina

- Patrick E. Higginbotham
  U.S. Circuit Judge
  U.S. Court of Appeals for the Fifth Circuit
  Dallas, Texas

- John T. Pierpont
  Sheriff
  Green County Sheriff's Department
  Springfield, Missouri

QUESTION 97: Has the Department evaluated the effectiveness of the State laws which require a waiting period before a handgun can be purchased? If such a review has been conducted, please provide the Committee a copy of any reports or memoranda on this evaluation.

ANSWER: The Department has not conducted a study on the specific question of the effectiveness of state waiting period laws. However, the 1985 study entitled "The Armed Criminal in America," which was funded by the National Institute of Justice, concludes that only a small minority of incarcerated felons acquired their firearms from retail gun dealers. This finding provides valuable insight into the potential effect on violent crime of any law that restricts the acquisition of firearms from licensed dealers.

QUESTION 98: How many persons with prior gun convictions were prosecuted during FY 1990 for Federal felony gun violations? How many persons were prosecuted specifically under 18 U.S.C. § 924(e)(1), the "Armed Career Criminal" statute?

ANSWER: We are unable to provide statistics with regard to defendants with prior "gun" convictions. Prosecutions under 18 U.S.C § 924(e)(1) require three prior convictions for "a violent felony or a serious drug offense." Such convictions may or may not involve a weapon. In order to determine if the prior convictions were for gun offenses, we would need to review each prosecution file and presentence report, and the defendant's criminal history; this data is maintained in our information management system. From November 1, 1988 through May 1991, a total of 856 persons were convicted of 924(e) violations.

QUESTION 99: Of the total FY '90 felony gun prosecutions, what percentage were handled through plea bargains and to what charges did the defendants plead guilty?

ANSWER: The Department does not collect data on plea bargains related to felony gun prosecutions.

QUESTION 100: In how many Federal criminal cases did judicial suppression of a firearm prevent the prosecution from going forward with the case in each of the past ten fiscal years? In how many cases were indictments not sought in firearms cases because of potential suppression problems?

ANSWER:The Department has no means by which to capture the data requested regarding suppression of a firearm preventing the prosecution of an individual. Our case management system captures data with regard to pending matters, cases filed and the disposition of those cases by plea, conviction after trial, acquittal or other disposition. Motions and hearings occurring in a case are not tracked by this system and we are not aware of any government department which would track this information.

QUESTION 101: Please provide any legal opinions or analyses concerning the admissibility of guns as an exception under the exclusionary rule.

ANSWER: There are no published or publicly available Department legal opinions or analyses on this issue, and under the Executive Branch policy on the confidentiality of Department of Justice legal advice we cannot disclose whether any component of the Department has provided legal advice concerning the issue.

QUESTION 102: Why is the Administration creating "Project Triggerlock" at this time when there was no mention of gun initiatives at the March 1991 crime summit? Why is this project needed when there is already an "Armed Career Criminal" statute? When is the project slated to begin and will this be started nationally or initially in selected areas of the country?

ANSWER: It is simply not true that there was no mention of gun initiatives at the Crime Summit. In fact, gun initiatives may have been one of the most talked about issues during the entire summit. Several panels discussed enforcement programs aimed at armed violent criminals, including one plenary session that focused exclusively on an initiative in Philadelphia. With regard to gun control, the panel entitled "Targeting the Armed Violent Offender" featured summaries by the Superintendent of the New Jersey State Police and an official from the Virginia State Police on their states' gun control laws.

Project Triggerlock is an excellent example of an enforcement initiative that grew out of discussions during the Crime Summit. Using the mandatory firearms penalties in the federal criminal code, Triggerlock is aimed the most dangerous armed offenders. The project is currently underway, and it is being initiated in all federal districts. The Armed Career Criminal statute is the primary tool being used by the U.S. Attorneys.

QUESTION 103: Did anyone, in or outside the Department, recommend that gun control and/or gun legislation be a separate topic discussed at the "crime summit?" If such a suggestion was made, who made it? If the recommendation was made in writing, please provide the Committee with a copy.

ANSWER: The Attorney General's Summit on Violent Crime, which was held March 3-5, 1991, was several months in the planning stage. During the planning stage, numerous discussions were held on the subject of violent crime and how the Department of Justice, in consultation with our law enforcement colleagues at the state and local level, could best respond to the challenge of combatting violent crime in the coming decade, and how the Summit could contribute to this effect. The topic of gun control was considered in these discussions. However, we are not aware of any written recommendations in this regard.

The issues involved in gun control were included in suggested topics and these suggestions were given careful consideration. It was determined that the best way to consider gun control proposals was in the context of enforcement efforts aimed at armed criminals. The reasonableness of this conclusion is supported by the reality that gun control is only a minor part of stopping dangerous offenders. Thus the panel entitled Targeting the Armed Violent Offender was established and gun control proponents were invited to participate, and did in fact participate, as panelists.

Courts:

QUESTION 104: Would you specifically address the subject of non-acquiescence in the final Report of the Federal Court Study Committee?

ANSWER: We have provided the answer to this question in response to question 10 of Part I.

QUESTION 105: With the scheduled elimination of the Parole Commission in the relatively near future, are you confident that Federal Judges will be able to administer supervised release?

ANSWER: The Parole Commission is scheduled to sunset on November 1, 1997. Currently, the parole population is over 20,000, and the annual number of parole revocation hearings is over 3,000 per year. The same figures for supervised release are likely to be higher, because the prison population itself is increasing each year, and a high proportion of released prisoners will have post-release supervision. The Department is concerned about this workload, and continues to study suggestions for improving the present arrangement for the administration of supervised release.

Prisons and Detention:

QUESTION 106: The Federal prisons are currently operating as close to 160 percent of capacity, with a population over 61,000. What do you project the population and percentage of capacity to be in 1995 and the year 2000?

ANSWER: We expect the Federal inmate population to continue to grow to approximately 98,800 by 1995 and to further expand to about 125,500 by 1999. Based on current capacity expansion plans, we project that the overcrowding will decrease to our stated goal of 130 percent of rated capacity by 1995 and remain at that level.

QUESTION 107: What would be the impact of the President's Crime bill, if enacted in its present form, on the Federal prison population? What would be the added cost to the prison system budget as a result of this increased population?

ANSWER: We have provided the answer to this question in response to question 16 of Part I.

QUESTION 108: Aside from proposing an increase in the budget to fund new prison construction, does the Administration have any proposals to address the problem of Federal prison overcrowding and the escalating costs of incarcerating the rapidly growing prison population?

ANSWER: We continue to explore new and innovative ideas with regard to overcrowding within the Federal prison system. We have been successful in acquiring minimum security bedspace at a number of military bases throughout the country. This has proved to be very cost effective, as we are able to move into existing buildings and utilize other available facilities, thus minimizing new construction. We have also been able to acquire institutional space at former community colleges and seminaries. Planned dual use of facilities have also been helpful; the Federal Correctional Institution at Ray Brook, New York was constructed to house olympic athletes during the 1980 Winter Olympics. In this instance, we were able to move in with very little modification of the existing structure. The Bureau of Prisons currently has facilities located at six former hospitals, colleges or schools, and four facilities located on deactivated military bases. The Department continues to work closely with the Department of Defense on base closures, and several locations have been identified for further study.

The Bureau of Prisons has adopted a practice of double-bunking our inmates throughout the system. This practice has provided much-needed space and is currently the norm at all our institutions except the United States Penitentiary at Marion, Illinois. However, as additional bedspace capacity is developed, we will conform to our goal of single bunking in high security and administrative institutions to provide adequate flexibility in security measures for those more difficult inmate populations. We also continue to refurbish and expand our older institutions, adding housing units and larger common areas as opposed to new construction.

The Bureau of Prison's inmate classification system is designed to initially place offenders at institutions with appropriate security and then, as on security requirement change, transfer inmates to less secure facilities in order to help prepare the inmates for the transition back to the community. This process is cost effective because we are housing only inmates who require supervision at our most secure institutions, which are the costliest to operate.

The Bureau of Prisons has taken several steps to ensure that new prison construction is as cost effective as possible. These actions include the use of Federal surplus property, donation of land to the Government at no cost, the use of already proven prison designs and new construction techniques, and the use of inmate labor for certain construction projects. The design of Federal

correctional facilities and use of new security technology are also responsible for prison staffing requirements that are lower than most State correctional systems.

To contain new prison construction costs as well as future operating expenses, in FY 1990, we adopted the concept of a prison complex, which consists of several facilities of different security levels (e.g., a maximum security U.S. Penitentiary, a medium security Federal Correctional Institution and a minimum security Federal Prison Camp) at one site. This reduces the total construction time, since only one site is required and cost savings will result from shared resources.

We recently conducted a comparison of per capita costs (cost per inmate/year) using the BOP's budget for fiscal years 1981 ($341 million) and 1990 ($1.1 billion). While the size of the inmate population was significantly greater in 1990 (58,000 inmates) than in 1981 (25,000 inmates), the per capita costs have, in fact, decreased by nine percent, when 1981 costs are adjusted for inflation and converted to 1990 dollars. This is primarily due to increased productivity and use of technological advances.

QUESTION 109: How are responsibilities for detention of presentence individuals divided between the Federal Bureau of Prisons and the U.S. Marshals?

ANSWER: The United States Marshals Service has the sole responsibility for the detention of presentenced individuals in federal custody. The Marshals Service must provide for the temporary care, custody and housing of Federal detainees and for their subsequent production for judicial proceedings.

In order to produce these presentenced individuals for appearance in each of the 271 federal court cities, the Marshals Service must acquire short term detention space at locations within reasonable distance of the federal court. The Service utilizes local facilities, typically obtained by contracting with county jails. Bureau of Prisons facilities are utilized where and when appropriate space is available at Metropolitan Detention Centers or jail units located within various institutions throughout the country. Metropolitan Detention Centers are located in the following areas: New York City; Chicago; Los Angeles; Miami; San Diego; and Oakdale, LA. Jail Units are located at: Pleasanton, CA, Englewood, CO, Milan, MI, Danbury, CT, Fairton, NJ, Memphis, TN, Phoenix, AZ, and Tucson, AZ.

The Bureau of Prisons is responsible for the custody and care of Federal sentenced prisoners. Although the Bureau of Prisons houses a growing number of presentenced individuals for the U.S. Marshals Service, those prisoners remain in the custody of the U.S. Marshal.

QUESTION 110: The Federal prisons have a tradition of leadership and professionalism. Many states follow the example of the Federal prisons. Does the Administration currently have any innovative

proposals or new ideas to improve the management, safety or quality of the Federal Prison System?

ANSWER: One of our newest programs is the Intensive Confinement Center, located in Lewisburg, Pennsylvania. This adaptation of the intensive confinement concept is unique because it offers a specialized program that provides a balance between a military boot camp and a facility with the traditional values of humane treatment and orderly management. Inmates who meet the criteria to participate are placed in the program for up to six months and then have the opportunity for an extended placement in a community corrections center near their release destination. This is a pilot project; however, if successful, we plan to implement other intensive confinement centers throughout the country. A female Intensive Confinement Center was just recently approved and will be located on the grounds of the Federal Prison Camp in Bryan, Texas.

The Bureau of Prison's Unit Management concept, although not a recently developed program, has been very successful in effectively managing our inmate population. Unit Management within an institution separates the population into small, manageable units. The unit is supervised by a Unit Manager and a staff consisting of Case Manager, Counselor, Unit Secretary and Correctional Officers. This "team" approach has proven very effective in our system.

We have embarked on an enhanced training program for Bureau of Prisons staff at all levels from new employees to executive level personnel. All institutions have enriched their "refresher" staff training program and now incorporate Employee Development Managers and Specialists to assist staff with upward mobility.

The Bureau of Prisons has enhanced its drug treatment program units at a number of Federal Correctional Institutions. These are unit-based comprehensive drug treatment programs which offer a very intensive approach to drug therapy. Inmates in these programs receive individual as well as group counseling and are separated from the general population at the institution. Drug program units are located at: Sheridan, OR; Seagoville, TX; Butner, NC; Tallahassee, FL; Lexington, KY; Fairton, NJ; Oxford, WI; and Rochester, MN.

The Bureau of Prisons has undertaken other new leadership and developmental techniques, including:

- Leadership Forums - provide leadership tools to mid-level managers/supervisors.
- Cross-Development Series - Manager/supervisors participate in cross-development correspondence courses. This provides them with the knowledge of how other departments operate.

- Incentive Awards - A new incentive awards policy has resulted in higher morale, increased quality and lower staff turnover.

- Conferences - Discipline-specific conferences are conducted every 12-24 months. This provides an opportunity for training, updating employees on current issues.

The Bureau of Prisons also has undertaken a number of initiatives to improve the management, safety or quality of the prison system. Some of these initiatives are:

- Strategic Planning - A systematic means of planning realistic goals 1-5 years in advance.

- Management Assessments - A systematic approach to develop guidelines for internal program reviews. The results of these reviews are shared with management/supervisors to enable them to correct deficiencies.

- Succession Planning - A systematic approach of assessing future managerial manpower needs and developing agency talent to meet those needs. Such programs are a feature of many private business organizations.

QUESTION 111: Close to 50 percent of individuals entering the Federal Prison System have a history of drug abuse. Do you believe that it is useful to provide treatment for offenders with substance abuse problems? How soon can the Bureau of Prisons realistically make that treatment available on a needs basis?

ANSWER: We are encouraged by some of the findings from recent studies that suggest treatment can be effective with incarcerated offenders. Still there remain questions with regard to optimal treatment effectiveness with prison populations. Well-controlled, long-term outcome studies are necessary in order to determine which program components are most effective. The Bureau of Prison's pilot drug abuse treatment programs are considered "state of the art" and differ from traditional treatment programs by reducing the staff-to-inmate ratio, increasing the program length and by including a strong research emphasis.

The Bureau of Prisons currently provides an appropriate level of drug abuse program support to any inmate who desires it. Participation in drug education programs is required of inmates with a substance abuse history.

QUESTION 112: Last year, the Congress passed as part of the Crime Control Act of 1990, the Correctional Options Incentives Amendments Act (Title XVIII of P.L. 101-647). This program would assist State and local governments in developing and testing correctional options around the country. Do you intend to seek funding for this program in FY '92? How much money will you request?

ANSWER: The Department of Justice strongly supports expansion of the range of available criminal sanctions to enhance public safety. However, we are not seeking funding of the Correctional Options Incentives Amendments Act in FY 92, because we believe existing programs will achieve the same goal most effectively and cost-efficiently.

The Department currently supports and assists a wide-range of intermediate sanctions projects through the programs of the Office of Justice Programs. We see no adequate reason for separating out this particular function from the existing funding and assistance programs. The proposed annual authorized funding of $220 million vastly exceeds any amount that could effectively be programmed and utilized in Federal assistance to State and local intermediate sanctions efforts.

In FY 1992 we have requested $490 million for Bureau of Justice Assistance. $405 million will be allocated to the States and territories under the formula grant portion of this program. The States and territories may use any amount of these funds for developing and implementing intermediate sanctions programs such as boot camps. Additionally, a portion (to be determined) of the $50 million discretionary grant program will be used to demonstrate and evaluate various intermediate sanction programs.

We believe that adequate resources are available through both the formula and discretionary grant programs to effectively support intermediate sanction programs.

BOP Medical Care:

QUESTION 113: A recent CBS 60 Minutes segment was very critical of the medical care provided to Federal inmates by BOP. Among the deficiencies reported were crowded facilities, staff shortages, and incompetent doctors. In 1989, The Dallas Morning News ran a six-part series on the poor quality of prison medical care that was also very critical of BOP. The newspaper articles cited many of the same problems mentioned on 60 Minutes, and noted that the poor quality of medicine "imperils" Federal inmates. Interestingly, the Veterans Administration recently admitted to the poor quality of medical care in its hospitals after years of similar allegations.

a. Has the Department ever confirmed or acknowledged that it has provided inadequate medical care to inmates? Would the Department support the creation of a Medical Review Board to review cases where inadequate health care has been alleged?

ANSWER: No. The Department has not confirmed that it has provided inadequate medical care. While there have been rare individual instances where the Department has settled cases related to health

care, as a system, the Bureau of Prisons provides adequate medical care to inmates. This has been confirmed in an external review completed in 1989. (See response to paragraph b.) As with major hospitals and health care delivery systems in the non-correctional sector, the Bureau of Prison's health care system has elements and particular services that are outstanding and others that are good. Just as there are no perfect health care delivery systems in the community, the Bureau of Prison's health care system is not perfect in every way. The Bureau of Prisons continues to evaluate its system to identify areas for improvement and to take active steps to enhance the delivery of inmate health care. The efforts of the Bureau of Prisons at the individual practitioner to patient level and the systems planning and oversight level endeavor to fulfill the medical mission of providing quality care consistent with acceptable community standards.

A Medical Review Board already has a mechanism in place in our quality assurance program.

b. What is BOP doing to assure an acceptable quality of medical care for inmates?

ANSWER: Inmates may express their concerns about any issue regarding their care or custody. A formal administrative remedy process is available in the event these informal contacts do not resolve a problem.

Currently, five of the Bureau of Prison's seven medical referral centers are accredited by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO), the national organization that accredits community hospitals. We are pursuing accreditation in the other two facilities.

To advance quality assurance, the Bureau of Prisons has established an Office of Quality Management in the Health Services Division, and hired a full-time physician, board-certified in quality assurance, to manage the program. This will be a comprehensive program, including morbidity and mortality reviews, the use of the National Practitioner Data Bank, credentialing of new medical personnel, and other standard quality assurance programs widely used in the community at large. While each institution has some form of ongoing quality assurance program designed to objectively and systematically monitor and evaluate the medical care provided at the facility, the Bureau of Prisons is seeking the use of outside experts to conduct independent quality assurance reviews where indicated.

The Bureau of Prisons has also established an extensive medical program review function. Staff experts in health care conduct thorough reviews of institutional health care operations every 18 months. Where deficiencies are detected, this process ensures prompt correction and conformance to established standards.

The Bureau of Prison recently commissioned an external review of its health care system. That review reported that "...the overall quality of health care in the Bureau of Prisons is adequate." In December 1989, the Bureau of Prisons invited a number of medical, judicial, correctional, congressional, and other officials to a conference in Springfield, Missouri to discuss the findings of this external review and other issues in prison health care. The Bureau of Prisons has already implemented most of the recommendations arising from this evaluation and the medical issues conference.

Agency Management:

QUESTION 114: In response to congressional and other concerns with Department of Justice management of the debt collection program, the Department, in its fiscal year 1992 budget request, committed to issuing a comprehensive plan for debt management by May 1, 1991.

a. What is the status of the plan? Will it be issued by May 1?

ANSWER: In response to congressional and other concerns with Department of Justice management of the debt collection program, the Department, in its fiscal year 1992 budget request, committed to issuing a comprehensive plan for debt management by May 1, 1991.

A second draft of the Department's Debt Collection Activity Plan ("Plan" was circulated within the Department, including our Inspector General, and to the Office of Management and Budget on April 15, 1991. After careful consideration of the best way to develop and implement debt collection planning, we have determined not to circulate a "final" debt collection management plan at this time. We expect to incorporate additional new ideas over the next few months. When a "final" plan is issued, we expect that it will provide substantial guidance on the Department's plans for collecting agency debts in the future and provide significant guidance to our client agencies.

In the Department's planning effort, each of the components with debt collection responsibilities is developing an individual plan of action, which, taken together, form a foundation for the Department's management to coordinate component activities and oversee and evaluate component actions in the future. These component plans are currently being revised in light of direction given by the Department's management.

Ultimately, the Department's "plan" will be an interim document, not a final statement. While we intend to clearly state our goals and objectives, and the means we intend to use to meet those goals and objectives, the debt collection planning process is a fluid and ongoing enterprise. As we implement the plan, and as each specific objective is accomplished, additional goals and objectives will be

enunciated and steps taken to implement those new goals and objectives.

b. What are the major components of the plan, i.e., what new initiatives does it contain that will improve Justice management of this high risk area?

ANSWER: The debt collection plan is, itself, a major step toward our overall goal of eliminating debt collection as a "high risk" area. To accomplish this goal, our plan includes establishing an overall debt collection management system to ensure that planning and management are effective and efficient. The Deputy Attorney General has been given responsibility for debt collection management and will hereafter be responsible for Department-wide planning and coordination of our debt collection activities. The Deputy Attorney General has accepted all five recommendations for Department-wide planning found in our Inspector General's January, 1990, report and these recommendations are currently being implemented. In December, 1990, the Deputy Attorney General appointed Judge Tim Murphy, as Associate Deputy Attorney General for Debt Collection. Judge Murphy, is currently reviewing all of the Department's debt collection activities in an effort to further increase debt collections by the United States. Judge Murphy will plan, supervise and coordinate the Department's debt collection efforts and will coordinate these efforts with its client agencies.

We are also enhancing reporting and accounting of affirmative claim litigation and debt collection activity within the Department. This objective includes establishing uniform definitions for the reporting and accounting functions; establishing a uniform interim reporting and accounting system, and developing a long-term reporting and accounting element for the Department-wide case tracking system and the overall computer platform that will support that system.

Our plan also includes improvements in the efficiency of civil and criminal debt collection activity within the Department and to improve client agency service. We have already brought on line the National Central Intake Facility (NCIF) and we are working with the Department of the Treasury, the Office of Management and Budget, and our client agencies on revising the Claims Collection Litigation Report (CCLR), which all agencies must use to refer claims to the Department. We are also working with representatives of GAO to revise the Federal Claims Collection Standards promulgated jointly by the Attorney General and the Comptroller General in 4 C.F.R. Parts 101-105.

We continue to discuss ideas and formulate options with our client agencies and OMB, and will be issuing policy, planning and management guidance to the agencies on our long-term plans before the end of the fiscal year. When that document is approved and released, we will provide it to the Committee.

QUESTION 115: The 1992 budget request identified eight high risk areas in the Department. Several of these areas, including asset seizures, have been highlighted in the Department's Financial Integrity Act reports for a number of years. For three of these areas -- debt management, INS management, and Marshal's Service financial management -- OMB has expressed reservations about the adequacy of Department efforts to resolve the problems.

a. What actions have been taken or are underway to improve Justice management of the high risk areas? To more proactively manage high risk areas in the future?

b. What progress has been made in improving the management of these areas? How have Federal financial and other risks been reduced or eliminated?

ANSWER: The Department has taken several steps to improve its oversight of these high risk areas, as well as the other issues included in the annual Integrity Act reports. As the Committee's question states, these are issues which have received priority presentation in the President's Budget. Most of the issues in the Department of Justice are extremely resource dependent, and our ability to correct the situations fully is largely dependent upon adequate resources being provided. Resources have been requested and are being applied according to the corrective action plans contained in the Integrity Act reports. Our corrective actions are realistic and sufficient to meet the problems and can be completed within the schedules, subject to the availability of resources.

The 1990 report was the first time the high risk areas were used in this particular way, and OMB performed its assessment based on that limited experience. Since then, we have improved our oversight and management of the issues. The specific actions vary with the issue, as appropriate. In general, we have tightened reporting and oversight. In two areas, asset forfeiture and debt collection, we have created units in the Deputy Attorney General's office to provide central leadership, coordination, and policy. In others, such as INS, we have performed special reviews or used special task forces to make recommendations on a wide range of problems and issues. In others, such as detention space, we have established a multi-component committee to plan and monitor actions on the issue. The detention space committee, for example, is led by the Bureau of Prisons and involves the Marshal Service and INS.

The issues are all complex enough that the corrective actions will take some time to complete. However, we have introduced a program of quarterly reporting, in which each component involved provides a detailed progress report to the Deputy Attorney General regarding progress against a detailed corrective action plan. Status reports are provided twice a year to the Executive Associate Director of OMB. We are also participating with OMB now in a series of management reviews of the high risk areas which are focussed on the three areas highlighted by the Committee's question. We believe that OMB may improve its assessment of these three areas once the

reviews are completed. We have discussed in some detail our planning and actions taken in the area of debt collection management in responding to question 114.

With regard to INS management, the special task force referred to in earlier questions made recommendations on many of the same issues as the GAO and OIG reports on which the high risk areas were based. Those high risk areas are being redrawn to clarify management responsibility for their correction within INS. We believe that the new management team in INS should be given the opportunity to carry out the corrective actions, and we will monitor them closely. INS has developed multi-year corrective action plans for the following material weaknesses: (1) outmoded automated accounting system; (2) inadequate financial management training; (3) inadequate supervision of the INS fee accounts; (4) ineffective funds control system, and (5) an ineffective security program.

Actions undertaken to date have laid the foundation for significant improvements in INS financial management and security. Achievement of some of the Service's goals, especially those involving the development and implementation of automated systems, will require the commitment of considerable resources over the next several years. The INS 1991 Mid-Year Report on Internal Controls, submitted to the Department, assessed progress in correcting high risk area weaknesses. This report identified critical milestones in planned corrective actions and provided an assessment of progress as of March 31, 1991. A list of high risk area weaknesses and corrective actions completed follows:

WEAKNESS: INS Security Program

MILESTONES COMPLETED: All Security Program assessments, other than personnel suitability/security have been completed, and corrective action plans have been developed. Two additional COMSEC accounts were inspected and custodians were given on-site training.

WEAKNESS: Automated Accounting and ADP Planning

MILESTONES COMPLETED: Implemented error message in Financial Accounting Control System (FACS) and developed procedures for ensuring that obligations reopened after posting of final payment are only processed by supervisors.

Produced an INS Requirements Analysis Document for the FMIS Distributed Budget Module.

WEAKNESS: Financial Management Training

MILESTONES COMPLETED: During the first quarter of FY 1991, several Headquarters budget and finance employees received FOCUS training from a private vendor.

FOCUS and other systems training to support testing of the FMIS Distributed Budget Module was given to Headquarters and regional finance and budget personnel.

Electronic Time and Attendance training was given to staff in the Offices of the Commissioner, the Deputy Commissioner, and the Executive Associate Commissioner.

A two-day Internal Control Training Workshop was given to INS Enforcement managers by Peat Marwick.

WEAKNESS: Inadequate Supervision of Fee Accounts

MILESTONES COMPLETED: A Headquarters User Fee Working Group initiated a series of visits to districts to assess Inspections, Detention and Deportation programs' operations funded by the Use Fee Account. The first site visit was conducted in the Miami District during September 1990; report provided to management in November.

As a result of the Immigration Act of 1990, the Customs Service no longer collects INS user fee fines; INS collects these fines directly. This should provide for more timely deposit and recording of user fee fines.

In March 1991, an INS accountant participated with the United States Customs Service in a compliance review of Inspections User fees owed to the government by public carriers.

WEAKNESS: INS Financial Management System [FACS]

MILESTONES COMPLETED: Developed as an ongoing requirement the submission of quarterly detailed backlog reports certified by the Chief, Headquarters Accounting, and the Assistant Regional Commissioners, Budget and Accounting.

Transferred control of Personal Services and Benefits (PS&B) funds from the regions

to Headquarters Program Managers. Also, established central control over hiring. A Resource Management Branch was established in the Office of the Comptroller to provide Headquarters management with relevant and reliable financial information concerning PS&B funds.

Modified the FACS to improve edit controls to reduce the possibility of duplicate payments.

Requested the Office of the Inspector General to perform on-site financial audits in Western and Southern Regional Offices. The Office of the Inspector General performed an audit of FY 1989 year-end closing procedures; exit interview held 9/20/90.

Remedied imbalances between resources and workload among our five accounting stations through remoting of work. An implementation plan was developed and modifications were made to FACS. The first function to be remoted, Temporary Duty Travel, from Headquarters to the Eastern Region was initiated.

The INS Administrative Manual was revised to provide improved guidance on voucher examination and reconciliation processes.

Finally, with regard to USMS financial management, we are pushing the corrective action plan as aggressively. The Marshals Service has targeted the plan for completion in two years. In the meantime, the Marshals Service is modifying its existing system to minimize problems. We will take steps to assure that the new system meets the Marshals Service's field needs and that a training program is in place to implement the system. In all areas, we are on schedule with the corrective action plans.

BOP Prison System Expansion Program:

QUESTION 116: The Federal prison system is experiencing unprecedented increases in its inmate population. The war on drugs and a general "get tough" attitude toward crime have caused the inmate population to double since 1980, and current projections indicate it will double again by the year 2000. To address this situation, the Bureau of Prisons (BOP) has embarked on the most extensive and costly facility expansion program in its history. In fiscal years 1989 through 1991, BOP received a total

of $2.4 billion for its facility expansion program. Costs could reach almost $3 billion by fiscal year 1995 and substantially more if increased expansion is approved to accommodate population increases projected for beyond 1995.

a. The Commission on Alternative Utilization of Military Facilities was established as a focal point for identifying military properties for possible conversion to prisons and drug treatment facilities. Such conversion is a considerably less costly way to add prison capacity than new prison construction. In its report, Prison Expansion: Program to Identify DOD Property for Prison Use Could be Improved, (GGD-90-110, September 30, 1990), GAO found that the Commission had not succeeded in identifying any DOD property that will be converted to prison use. This lack of success resulted from two factors: the Commission did not review all properties that might have been suitable, and procedural weaknesses affected its review process. Given that DOD is stepping up its efforts to close unneeded bases, what is BOP doing to assure that all appropriate properties are being carefully identified and considered for conversion to prison use?

ANSWER: The Bureau of Prisons continues to work very closely with the Commission in identifying suitable military facilities for housing inmates. This would provide immediate bedspace more cost effectively. Although legislation allows the identification of minimum and medium security facilities, efforts to date have not produced any facilities for conversion. The Bureau of Prisons will continue to work with the Commission. However, the difficulty in identifying suitable properties is compounded by the fact that most of the available locations are too small, the land-use of surrounding properties would not be compatible with correctional facilities, and the properties would be suitable only for minimum security correctional institutions. Unfortunately, the Bureau of Prisons, at this point, has a greater need for higher security bedspace.

Additionally, the Bureau is working with the Office of Economic Adjustment, Office of the Secretary of Defense, which is responsible for coordinating base reuse functions for those military bases being closed under the 1988 Base Realignment and Closure Act. If the second base closure recommendations should be enacted, the Bureau will continue to work closely with the Office of Economic Adjustment. It is not expected, however, that productive results will occur in the immediate future.

b. To accommodate the increasing inmate population and the needs of the facility expansion program, BOP plans to double its work force by fiscal year-end 1995. BOP has traditionally had difficulty recruiting qualified applicants for positions such as correctional officers, nurses, physician assistants, social scientists,

accountants, educators, warehouse staff, maintenance mechanics, and other trades persons. Lack of competitive pay rates, the age 35 maximum entry age limit, lack of qualified applicants, and the poor image of correctional work are cited as reasons why it is difficult to hire people to fill specialty type positions. What has BOP done to target recruitment for the difficult-to-fill positions? If BOP is unable to attract people for critical positions, how will this affect BOP's ability to activate and operate all the prisons it plans to build? What contingency plans exist for a scenario where the labor pool is such that there are not enough qualified applicants to fill positions?

ANSWER: The Human Resource Management Division in the Bureau of Prisons was created three years ago to place greater emphasis on employee concerns as we faced phenomenal growth in our prison work force. Special emphasis was placed on recruiting, staffing, pay and benefits, minority outreach and employee development.

BOP's National Recruiting Office was created to streamline agency recruitment efforts and to focus on minority outreach and job-specific occupations. This has proven to be effective, as the percent and number of minorities has increased along with the pool of applicants for hard-to-fill jobs.

The BOP's Human Resource Management Division has used strategic planning, along with a comprehensive analysis of its work force planning needs for the next several years. Together, these tools will be used to meet anticipated growth in the work force.

Specifically, BOP recently initiated the following steps to meet its future staffing needs:

- contracted to produce advertisements in all media throughout the United States. The advertisements will focus on minority outreach and discipline-specific occupations.

- created a medical recruitment section specifically designed to recruit Public Health Service and General Schedule applicants to fill all medical positions. This has resulted in reducing the current medical vacancy rate to less than 11 percent.

- received delegated authority from the Office of Personnel Management to examine applications for the following positions: Correctional Officer, Physician Assistant, Medical Doctor, Clinical and Counseling Psychologist, and Correctional Treatment Specialist. By conducting examinations of these positions, BOP is able to provide a faster and higher quality service, not only to its managers/supervisors, but also to applicants. The Examining Unit processed 30,000 applications during 1990

and currently has over 7,000 applications on the Correctional Officer Register.

- begun implementing the Federal Employees Pay Comparability Act of 1990. This recent legislation will increase entry level pay, and will provide bonuses for recruitment, retention and relocation.

Authorization Questions for DEA:

Measures of effectiveness of Federal drug programs:

QUESTION 117: It is a longstanding problem that there is no exact data on the quantity of illicit drugs being produced or cultivated; only estimates of what is being produced or cultivated are available. This, by itself, leaves open to question how effective the various drug programs operated by the Federal government are.

a. How much reliance can be placed on these estimates of production and cultivation? Have the techniques used to develop these estimates been subjected to independent verification? What improvements have been incorporated to make the estimates more reliable?

ANSWER: DEA, in conjunction with the Department of State and other Federal agencies with drug-related intelligence responsibilities, coordinates illicit drug crop estimates in support of the annual International Narcotics Control Strategy Report and the annual National Narcotics Intelligence Consumers Committee Report. To estimate crop cultivation, DEA principally relies on technical information provided by other government agencies. DEA itself plays a critical role in the establishment of yield factors used in the development of final production estimates. These yield data are based upon source reporting, direct observation (where practical), and information provided by other government organizations, as well as allied cooperating foreign government officials. This information is compared with data derived from controlled agricultural studies.

We believe that the crop estimation methodology reflected in the Reports is scientifically sound and based upon the best data available. Nevertheless, users of this information are cautioned that cultivation and production of these substances are either illegal and not under government control and that, as a result, acquisition of totally accurate data remains a formidable task. The estimation techniques employed, however, are continually subjected to rigorous internal Unites States Government and cooperating foreign government review. The methodologies employed have kept pace with scientific/ technical developments in such diverse fields as photogrammetry, agronomy, surveying, and crop estimation. The limitations inherent in drug crop cultivation and production estimates are not totally technical in nature, but

rather, relate more often to the illicit and clandestine nature of the activity.

b. Does DEA use these estimates to determine the effectiveness of its drug programs? How does DEA use these estimates to determine the effectiveness of its efforts? If DEA does not use these estimates, what does it use? If DEA uses prior year's results, what is the basis for reliance on these results?

ANSWER: We use a number of criteria to gauge the effectiveness of DEA programs, including a reduction in foreign narcotics crop cultivation. No single indicator is a reliable measure of effectiveness. The ultimate measure of success is a reduction in the availability of drugs on the streets of the United States. Changes in price, purity and size and frequency of drug shipments sustained overtime are generally reliable indicators of positive developments in reducing availability. When these indicators are coupled with demonstrable decreases in the use of illicit drugs, we are able to determine that Federal, state and local drug control efforts are effective.

c. How does DEA measure the success of its overall operations over the short term and long term (3-5 years)?

ANSWER: The measurements of success during the short and long term are the same: demonstrated reductions in the supply and demand for illicit drugs.

Marijuana Eradication:

QUESTION 118: The United States is a major marijuana producer. DEA is an active participant with other Federal, State, and local law enforcement agencies in the eradication of marijuana. According to the February 1991 National Drug Control Strategy, the Administration is seeking $15 million in fiscal year 1992 to continue eradication programs. On page 29 of the strategy it also states that in 1990 the DEA Domestic Cannabis Eradication/Suppression Program resulted in the eradication of 7.3 million cultivated plants, 5,729 arrests, and nearly $38 million in seized assets. The eradication of 7.3 million plants represented a 30 percent increase over the number of plants eradicated in 1989. It appears that program effectiveness in this instance is measured against prior years' results. This would be a good basis for measuring the effectiveness of this program if you could be assured that the number of marijuana plants cultivated in 1990 did not increase over the number cultivated in 1989.

a. How successful has DEA's program been? What are the estimates of cannabis production in this country? Has cannabis production in the United States increased?

ANSWER: According to the National Narcotics Information Coordinating Committee (NNICC) Report for 1990, from 5,000 to 6,000 metric tons of marijuana were estimated to have been cultivated in the United States in 1990. The same estimate stands for 1991.

Considering that a marijuana plant produces an average of one pound of marijuana in a single year and that DEA's program resulted in the eradication of 7.3 million plants, DEA's domestic cannabis eradication program effectively eradicated 7.3 million pounds of marijuana (3,650 tons) which is between 60 and 70 percent of the NNICC's estimated total production. In this respect, DEA's program has been very successful.

b. Is the United States a source country exporting marijuana? If so, to what countries is the drug being exported?

ANSWER: We have no concrete evidence to suggest that the United States is exporting marijuana. However, American-grown sinsemilla is the highest quality marijuana in the world. It is the preference of domestic users. Without adequate control on domestic marijuana cultivation and trafficking, the United States could become a marijuana exporting country.

c. Are there any alternative policies that should be considered given that eradication of illegal drug producing plants in foreign countries has not been effective?

ANSWER: Although some foreign eradication programs have been successful, such as Colombian and Jamaican marijuana programs, we continue to examine and encourage suggestions for alternative policies to foreign eradication. Additional policy options regarding eradication alternatives are explored regularly through the National Drug Control Strategy process.

d. How does DEA account for possible increases in production quantities in measuring the effectiveness of this program? With other programs?

ANSWER: We have not found that there is a significant increase in the amount of marijuana produced domestically, but there is a significant increase in the quality of domestic marijuana. This increase in quality is due to a higher level technology used in growing marijuana. The enhanced sophistication of marijuana growers is also making it more difficult for law enforcement to locate growing centers as many of these centers have moved indoors or underground. In order for the program to continue to be effective, DEA and other law enforcement agencies must be able to locate the indoor and subterranean growing centers. We have had success in the use of infrared technology, electric and water usage analyses, and informants in locating hidden growing centers.

e. What is DEA's involvement in the eradication of marijuana and other crops used in the production of illicit drugs in foreign countries? Are any statistics available on the results of these programs? Please provide them for the record.

ANSWER: DEA is not directly involved in the eradication of illicit crops in foreign countries. The Department does, however, encourage foreign governments to pursue crop eradication and will assist in an advisory capacity if necessary. The State Department's Bureau of International Narcotics Matters is primarily responsible for U.S. support to foreign eradication programs.

Intelligence Centers:

QUESTION 119: There are many intelligence centers currently in operation that provide various types of illegal drug activity intelligence. DEA operates the El Paso Intelligence Center (EPIC) in concert with nine other Federal agencies. EPIC also provides support to other Federal, State, and local law enforcement agencies. DOD was recently tasked with integrating into an effective communications network the command, control, communications, and technical intelligence assets of the United States that are dedicated to the interdiction of illegal drugs into the United States.

e. What has DOD done to integrate EPIC into the communications network it was tasked to establish?

ANSWER: There are two Department of Defense (DOD) representatives located at EPIC to facilitate coordination on intelligence matters regarding DOD's Detection and Monitoring mission. Further, the JVIDS (Joint Visual Integrated Display System), a DOD Communications/data network is located at EPIC on the 24 hour watch. The Narcotics Tactical Reporting System (NTRS) will also be provided to EPIC to enhance connectivity between DOD, EPIC and other law enforcement tactical reporting elements and intelligence consumers. The Defense Communications Agency is working together to build up EPIC's internal communications capability.

Meetings between DOJ, DEA, and DOD during November 1990 indicated that the intelligence requirements of organizations and personnel fighting the drug war were such that significant improvements had to be made to EPIC's information support system to allow it to keep pace with increasing demands for its services. These discussions led to the initiation of the joint EPIC Improvement Project. The overall objective of the two-year EPIC Improvement Project is to enhance EPIC's information support system and related communications to rapidly satisfy its current and anticipated intelligence information processing requirements. In this light, the project will improve the efficiency of EPIC staff by enhancing the utility, supportability, functionality, and performance of its information system. This project has already identified short-

term solutions to some of EPIC's immediate intelligence information processing difficulties. Some of the pressing quick start improvements, already approved by the joint Senior Management Team (members from DOD and DOJ), are in the process of being implemented. DOD has provided much-needed technical expertise to assess EPIC's intelligence information processing environment.

In a related development, the Information Architecture and Integration Subgroup (IAISG) of the Science and Technology Committee, Office of National Drug Control Policy is in the process of defining an overall drug information management architecture for the entire counter drug community and providing associated implementation guidance. The IAISG will produce several documents that will influence the information systems used to support the many agencies fighting the war on drugs. The National Drug Control ADP Architecture and National Information Management Master Plan will define road maps for ADP and communications interoperability, describe an overall information architecture, and delineate EPIC's information support requirements within the broad, community-wide, counter drug context. The Department has representation from several components (e.g., FBI, DEA, Justice Management Division, etc.) on the IAISG and its associated task teams.

b. **What impact, if any, has this had on EPIC's ability to provide intelligence information to Federal, State, and local law enforcement agencies?**

ANSWER: EPIC continues to provide real-time actionable intelligence to law enforcement agencies. Further information exchange with DOD elements has enhanced the intelligence products/services provided by EPIC to Federal, state, and local law enforcement agencies.

QUESTION 120: The fiscal year 1992 National Drug Control Strategy (page 118) contained statements that the Attorney General "will create and chair a Law Enforcement Drug Intelligence Council to coordinate the development and prioritization of drug intelligence collection and analysis requirements for the Federal law enforcement agencies."

a. **Has this council been established? Is DEA a participant? Who are the other members of the Council?**

ANSWER: At the Attorney General's direction, Justice Department staff are in the process of establishing the Law Enforcement Drug Intelligence Council. Staff from DEA will participate as will other members of the law enforcement community, the intelligence community, and the defense community.

b. **What input, if any, has DEA provided or been asked to provide to the Council?**

ANSWER: The DEA Administrator has participated in a series of meetings with other Department officials regarding the development of the scope and function of the LEDIC.

o. How does DEA view the council's role in bringing together the various intelligence centers now in operation?

ANSWER: The Department views the role of the LEDIC as a coordination mechanism to prioritize drug intelligence collections and analysis requirements for the Federal Government. The Department recognizes the specialized and limited responsibilities of Federal drug intelligence centers. To ensure maximum effective use of limited drug intelligence resources, the LEDIC will work to enhance the integration of these organizational structures to collect, digest, and apply the large volume of relevant information being acquired concerning drug traffickers.

Diversion of chemicals used in manufacturing illegal drugs:

QUESTION 121: In 1985, Congress passed the Chemical Diversion and Trafficking Act (CDTA), which gives DEA the authority to regulate chemicals used in manufacturing illegal drugs such as cocaine. The CDTA does not require chemical handlers -- manufacturers, distributors, exporters and importers--to register with the Federal government. DEA is left to identify chemical handlers. The CDTA also requires chemical handlers to retain "retrievable" records of domestic transactions for inspection by DEA.

a. Has the CDTA been effective in reducing the flow of chemicals essential to cocaine production?

ANSWER: The Chemical Diversion and Trafficking Act has provided us with an important tool for use in reducing the flow of cocaine essential chemicals. In the 18 months that the Act has been in effect there have been some notable successes in this regard. Using the powers authorized by the CDTA, shipments of cocaine essential chemicals totalling approximately 670 metric tons have been suspended. These shipments were suspended because they represented a high potential for diversion. In addition, regular customer status has been denied to 65 foreign consignees, most of which are located in Central and South America. Sixty percent of Colombian customers for U.S. chemicals have been disapproved. This has resulted in approximately a fifty percent reduction in chemical exports to Colombia.

Unfortunately, the net effect of this activity has been mitigated by an increase in cocaine essential chemicals being exported from Europe to Latin America. However, largely as a result of diplomatic efforts by the Department of Justice and the Department of State, the European Community (EC) has passed a regulation to discourage the diversion of certain chemicals used in cocaine

production. It must be implemented by each EC member by July 1991.

b. What has been DEA's experience in administering the CDTA? Is there a need for any legislative changes?

ANSWER: Domestic enforcement of the CDTA has also resulted in initial successes with a reduction in U.S. clandestine laboratory activity represented by a 35% drop in clandestine laboratory seizures last year. A loophole in the CDTA that exempts ephedrine tablets from control has been exploited by illicit methamphetamine producers. Possible amendments to the CDTA are currently being considered by the Department of Justice to enhance the effectiveness of the act.

c. What has been DEA's experience in identifying chemical handlers? Is there a need to require chemical handlers to register with DEA?

ANSWER: With the inception of the Chemical Diversion and Trafficking Act, the DEA undertook a nationwide survey of chemical handlers in order to identify those which would be subject to the new law. This experience is nearing completion. Approximately 3,000 firms have been identified. All have had their obligations under the CDTA explained to them by DEA Diversion Investigators. We anticipate that a similar survey will be undertaken in the near future in order to identify those firms which handle the additional chemicals added to the CDTA.

Registering of certain handlers of precursor chemicals is one possible amendment currently under consideration.

d. Does DEA cooperate with the U.S. Customs Service in administering the CDTA?

ANSWER: The Chemical Diversion and Trafficking Act (CDTA) is enforced by the Attorney General, who has delegated authority to the DEA. The U.S. Customs Service, in coordination with DEA, enforces compliance with the CDTA at U.S. borders.

Under provisions of the CDTA, any regulated person who imports or exports a threshold amount of a listed chemical is required to provide advance notification to the DEA. The DEA then verifies the authenticity of the transaction and maintains this information in a computer database at DEA headquarters. This information is transferred electronically to the U.S. Customs Service data center in Newington, Virginia several times a day and is thereby made available to the U.S. Customs Treasury Enforcement Computer System (TECS). The chemical information is therefore available to all Customs Inspectors at the port cities via TECS. Prior to an import or export of a listed chemical, Customs Inspectors access TECS to ensure that the DEA has received advance notification of all shipments and that DEA has not placed a "stop shipment" on the transaction because of evidence of intended diversion.

W. Lee Rawls, Assistant Attorney General, U.S. Department of Justice, Letter to Hon. Donald S. Riegle, Chairman, Banking, Housing and Urban Affairs, U.S. Senate, Dated May 23, 1991

U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

May 23, 1991

The Honorable Donald S. Riegle
Chairman
Committee on Banking, Housing and Urban Affairs
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

Thank you for your recent letter asking for the views of the Department of Justice concerning the problems of money laundering and financial institution fraud, particularly with respect to foreign banks operating in the United States and the transfer of laundered funds to foreign countries.

The Justice Department is committed to the enforcement of the money laundering laws with respect to all categories of criminal activity, including white collar crimes such as financial institution fraud. Indeed, to emphasize the broad range of criminal activity to which the money laundering statutes apply, and to improve the ability of the Department to investigate and prosecute these offenses, the Attorney General has recently reorganized the Criminal Division to create a new Money Laundering Section. The Section has particular responsibility for the criminal enforcement of the money laundering statutes, 18 U.S.C. §§ 1956 and 1957, and 31 U.S.C. §§ 5311 et seq., while the Criminal Division as a whole has responsibility for the application of the forfeiture statutes, 18 U.S.C. §§ 981-82, which have become very important law enforcement tools in cases involving the laundered proceeds of white collar crime.[1] Applying these statutes to maximize our enforcement efforts requires substantial coordination within the Department of Justice.

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[1] An example of the application of these statutes in a financial institution fraud case involving a foreign bank operating a branch in the United States is the recent indictment in the Northern District of Georgia in United States v. Drogoul, et al., arising from the activities of the Atlanta branch of a major Italian bank, Banca Nazionale del Lavoro. In that case, the defendants are charged, inter alia, under §1956 with the laundering of hundreds of millions of dollars in proceeds from an elaborate fraud scheme perpetrated against BNL-Atlanta's parent bank in Italy. The indictment includes a criminal forfeiture count under §982 seeking the forfeiture of the laundered funds and any property used to facilitate the laundering offenses.

While we have had successes in this area,[2] our increased emphasis on investigations and prosecutions of this type has, predictably, brought to light problems that we believe legislation can resolve. For instance, we have drafted proposals to simplify the issuance of subpoenas for bank records, to allow the issuance of administrative subpoenas by the Attorney General for the purpose of undertaking civil forfeiture investigations, and to allow information gathered by a grand jury in criminal investigations to be used by attorneys for the government in forfeiture cases involving money laundering and fraud. Favorable action on these measures by the Senate would assist the Department's enforcement efforts in this area.[3] Furthermore, additional provisions are currently being developed with the Department of Treasury and will be transmitted by the Administration in the near future.

Enforcement is most difficult when criminal proceeds are laundered and transferred overseas. Current law gives the government several ways of attempting to recover such funds, but each has problems. If the funds (or property into which the funds have been converted) can be located in a foreign country, we can seek to have the defendant order the money retransferred to the United States or seek the assistance of the foreign government in repatriating the money. Another option is to ask the foreign government to forfeit the property. Two foreign governments are currently in the process of implementing legislation permitting them to give effect to forfeiture orders issued by U.S. courts in some cases, to enable those countries to forfeit the property to themselves. In other cases and other countries, it may be possible for the U.S. to share sufficient evidence with the foreign jurisdiction to establish the property's forfeitability to foreign governments under foreign law.

We are also actively working with the OAS CICAD countries to develop model asset forfeiture and money laundering statutes, and with the G-7 Financial Action Task Force, the Council of Europe,

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[2] To date, we have not encountered many instances in which the proceeds of bank fraud have been laundered through overseas financial institutions. There have been a number of cases, however, where such proceeds have been laundered domestically. In addition to the Drogoul case, see United States v. Kelley, ___ F.2d ___ (10th Cir. Apr. 8, 1991) (proceeds of bank fraud laundered through purchase of automobiles), and United States v. Dillman, Cr. No. 3-91 100-H, indictment filed April 17, 1991, in the Northern District of Texas (proceeds of bank fraud laundered through series of transactions resulting in purchase of stock).

[3] A copy of our legislative proposals in this area, and a section-by-section analysis of each, is attached for your review.

and other international bodies to make it easier to obtain the assistance of foreign governments in such cases. We also include asset forfeiture provisions in the Mutual Legal Assistance Treaties and have signed asset forfeiture executive agreements with Hong Kong, the United Kingdom, and Colombia.

Another way to recover criminal proceeds that have been laundered and sent overseas is to pursue substitute assets located within the United States, but this procedure is not without limitations. For example, if, in a hypothetical case, proceeds of a multi-million dollar fraud scheme are laundered by transferring them to the New York bank account held by a foreign bank that did no business in the United States, the foreign bank's account would be "swept" each night so that the proceeds of the fraud would be immediately transferred overseas. This would leave a zero balance in the foreign bank's account at the beginning of each business day.

Federal law, of course, permits criminal charges to be brought against a foreign bank that participates in a money laundering scheme; but like a foreign individual, a foreign bank can be brought to trial only if it is found within, or chooses to submit to the jurisdiction of, the United States. In cases where a foreign bank cannot be brought to trial, the government would have two choices in attempting to recover the proceeds of the fraud: a civil forfeiture action against any money held by the foreign bank under 18 U.S.C. §981(a)(1)(A) (civil forfeiture of property involved in a money laundering offense), and a criminal forfeiture action against the individual defendants who committed the fraud and money laundering offenses under §982(a)(1) (criminal forfeiture of same).[4]

A civil forfeiture, which generally would be an action in rem against any funds held by the foreign bank in its accounts in New York at the time the action is filed, would not require the indictment or conviction of any person; the action would be directed solely at the offending property. Thus in a civil action, it would not matter that the account holder was not subject to criminal charges. But under §981, only property directly traceable to the money laundering offense is subject to forfeiture. If the offending property, i.e. the property that was laundered, has been removed from the United States, the government has no right under §981 to forfeit substitute property even if the "dirty money" has been replaced with other funds of equal value.

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[4] In the BCCI case, the courts did have jurisdiction over BCCI so that the government was able to pursue criminal forfeiture directly against the foreign bank as well as through in rem proceedings directed at property derived from drug trafficking.

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In the hypothetical case, the actual property subject to forfeiture would have been swept out of the foreign bank's accounts each night, and would therefore no longer be in the jurisdiction of the United States. Any property later found in those accounts would not be the same funds that were involved in the alleged money laundering offenses. Therefore, none of the funds on deposit at the time the civil action was filed would be subject to forfeiture. A proposal to close this loophole, i.e. to allow the forfeiture of fungible property in a bank account in a civil action, is before the House of Representatives in §30 of H.R. 26.

In a criminal forfeiture action, forfeiture is characterized as a form of punishment against the convicted offender. Therefore, if through any act of the defendant the actual property subject to forfeiture -- i.e., the property involved in the money laundering offense -- is unavailable, the court may order the forfeiture of substitute assets. The substitute assets, however, must be assets of the defendant. Property belonging to a third party may not be forfeited to satisfy what is essentially a personal judgment against the defendant punishing him for his crime.

In the hypothetical case, the government would file a criminal forfeiture count against the individuals who committed the fraud and money laundering offenses; but in the event those individual defendants were convicted, the forfeiture order could only be satisfied out of their personal assets, not out of the untainted assets of an unindicted party. Therefore, while theoretically all of the laundered dollars would be subject to forfeiture if the individual defendants were convicted of money laundering (defendants are jointly and severally liable for the entire amount of property involved in the offense), the United States would have to satisfy the forfeiture judgment out of their personal assets and would likely recover only a tiny fraction of the funds that may have been involved in the offense.[5]

The criminal forfeiture statute does provide a mechanism for reaching property of a convicted defendant that has been transferred to an unindicted third party in an attempt to avoid forfeiture. Under 21 U.S.C. §853(c), which is incorporated by reference into §982, the court may order the forfeiture of property that was involved in an offense but later transferred to a third party, subject to the right of the third party to show that he had superior title to the property all along, or that he was a bona fide purchaser of the property who had no reason to believe that the property was subject to forfeiture when he acquired it. See 21 U.S.C. §853(n).

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[5] Defendants are jointly and severally liable for the entire amount of property involved in the offense.

For several reasons, this provision would not be helpful to the government in the hypothetical case. First, the statute speaks of property "subsequently transferred" from the defendant to the third party. This implies that the government's rights against property held by third parties applies only to the property actually involved in the offense that was once in the possession of the defendant, not to replacement property later obtained by the third party from another source.

Second, the statute was intended to assist the court in enforcing the relation-back doctrine which holds that title to property involved in a criminal offense vests in the United States at the time the offense occurs. Under the statute, only bona fide purchasers can defeat the government's title to such property. Thus, if the money to which the government has title under the relation-back doctrine were found in the possession of the foreign bank, the court could order its forfeiture subject to that bank's right to prove that it was a bona fide purchaser. Nothing in the statute, however, subjects a third party to the forfeiture of substitute assets even if he was not a bona fide purchaser of the tainted property. This is because, as noted, substitute assets may only be forfeited where the actual property subject to forfeiture is unavailable due to some action "of the defendant."

We appreciate your interest in the views of the Department of Justice on these issues and are, of course, willing to work with the committee in addressing any of the problems discussed in this letter.

The Office of Management and Budget advises that from the standpoint of the Administration's program there is no objection to the submission of the enclosed proposal.

Sincerely,

W. Lee Rawls

W. Lee Rawls
Assistant Attorney General

W. Lee Rawls, Assistant Attorney General, U.S. Department of Justice, Letter With Enclosures to Hon. Danforth Quayle, President of the Senate, U.S. Senate, Dated May 23, 1991

U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

May 23, 1991

The Honorable Danforth Quayle
President of the Senate
United States Senate
Washington, D.C. 20510

Dear Mr. President:

Enclosed for your consideration and appropriate reference is proposed legislation entitled the "Money Laundering Improvements Act of 1991". A section-by-section analysis of the proposal is also enclosed. This legislation would make a series of amendments to the money laundering statutes enacted in the Anti-Drug Abuse Acts of 1986 and 1988 and the Crime Control Act of 1990. Additional provisions are being developed with the Department of Treasury and will be transmitted by the Administration in the near future.

Our experience with the money laundering statutes over the past four years indicates that these provisions are proving to be the powerful tools against sophisticated financial crime that Congress intended. Not surprisingly, however, as prosecutors have become more familiar with the new statutes, and as appellate courts have begun to interpret them, we have encountered ambiguities, loopholes and other problems that require legislative action to correct. We have also discovered various procedural inadequacies in related areas of the law, including the civil forfeiture statutes, that Congress intended to be used in conjunction with the money laundering provisions. Addressing these matters would greatly enhance the ability of the Department of Justice to enforce the money laundering laws through forfeiture actions. We therefore urge that the legislation be promptly enacted.

The Office of Management and Budget has advised that there is no objection to the submission of this legislation from the standpoint of the Administration's program.

Sincerely,

W. Lee Rawls
Assistant Attorney General

Enclosures

A BILL

Be it enacted by the Senate and House of Representatives of the United States in Congress assembled,

SEC. 1. SHORT TITLE.

This Act may be cited as the Money Laundering Improvements Act of 1991.

Title I -- Forfeiture Procedures in Money Laundering Cases

SEC. 101. JURISDICTION IN CIVIL FORFEITURE CASES

(a) IN GENERAL.-- Section 1355 of title 28, United States Code, is amended by designating the existing matter as subsection (a), and by adding the following new subsections:

"(b) (1) A forfeiture action or proceeding may be brought in the district court for the district in which any of the acts or omissions giving rise to the forfeiture occurred, or in any other district where venue for the forfeiture action or proceeding is specifically provided by section 1395 of this title or any other statute.

"(2) Whenever property subject to forfeiture under the laws of the United States is located in a foreign country,

or has been detained or seized pursuant to legal process or competent authority of a foreign government, an action or proceeding for forfeiture may be brought as provided in paragraph (1), or in the United States District Court for the District of Columbia.

"(c) "In any case in which a final order disposing of property in a civil forfeiture action or proceeding is appealed, removal of the property by the prevailing party shall not deprive the court of jurisdiction. Upon motion of the appealing party, the district court or the court of appeals shall issue any order necessary to preserve the right of the appealing party to the full value of the property at issue, including a stay of the judgment of the district court pending appeal or requiring the prevailing party to post an appeal bond.".

SEC. 102. CIVIL FORFEITURE OF FUNGIBLE PROPERTY

(a). Chapter 46 of title 18, United States Code, is amended by adding at the end thereof the following new section:

"§ 984. Civil Forfeiture of Fungible Property.

"(a) This section shall apply to any action for forfeiture brought by the United States.

"(b) In any forfeiture action in rem in which the subject property is cash, monetary instruments in bearer form, funds deposited in an account in a financial institution, or other fungible property, it shall not be necessary for the government to identify the specific property involved in the offense that is the basis for the forfeiture, nor shall it be a defense that the property involved in such an offense has been removed and replaced by identical property. Except as provided in subsection (c), any identical property found in the same place or account as the property involved in the offense that is the basis for the forfeiture shall be subject to forfeiture under this section.

"(c) No action pursuant to this section to forfeit property not traceable directly to the offense that is the basis for the forfeiture may be commenced more than one year from the date of the offense.

"(d) No action pursuant to this section to forfeit property not traceable directly to the offense that is the basis for the forfeiture may be taken against an account of an agency or branch of a foreign bank (as such terms are defined in paragraphs 1 and 3 of section 1(b) of the International Banking Act of 1978) held

in the United States at another financial institution where said agency or branch is not itself a party to the offense that is the basis for the forfeiture.".

(b) The amendments made by this section shall apply retroactively.

(c) The chapter analysis for chapter 46 of title 18, United States Code, is amended by adding at the end the following:

"984. Civil forfeiture of fungible property.".

SEC. 103. ADMINISTRATIVE SUBPOENAS

(a) IN GENERAL.-- Chapter 46 of title 18, United States Code, is amended by adding at the end the following new section:

"985. Administrative Subpoenas

"(a) (1) For the purpose of conducting a civil investigation in contemplation of a civil forfeiture proceeding under this title or the Controlled Substances Act, the Attorney General may --

"(A) administer oaths and affirmations;

"(B) take evidence; and

"(C) by subpoena, summon witnesses and require the production of any books, papers, correspondence, memoranda, or other records which the Attorney General deems relevant or material to the inquiry. Such subpoena may require the attendance of witnesses and the production of any such records from any place in

the United States at any place in the United States designated by the Attorney General.

"(2) The same procedures and limitations as are provided with respect to civil investigative demands in subsections (g), (h), and (j) of section 1968 of title 18, United States Code, apply with respect to a subpoena issued under this subsection. Process required by such subsections to be served upon the custodian shall be served on the Attorney General. Failure to comply with an order of the court to enforce such subpoena shall be punishable as contempt.

"(3) In the case of a subpoena for which the return date is less than 5 days after the date of service, no person shall be found in contempt for failure to comply by the return date if such person files a petition under paragraph (2) not later than 5 days after the date of service.

"(4) A subpoena may be issued pursuant to this subsection at any time up to the commencement of a judicial proceeding under this section."

(b) **CONFORMING AMENDMENT.**-- The chapter analysis for chapter 46 of title 18, United States Code is amended by adding the following:

"985. Administrative Subpoenas."

SEC. 104. PROCEDURE FOR SUBPOENAING BANK RECORDS

(a) IN GENERAL.-- Chapter 46 of title 18, United States Code, is amended by adding at the end the following new section:

"986. Subpoenas for Bank Records

"(a) At any time after the commencement of any action for forfeiture brought by the United States under this title or the Controlled Substances Act, any party may request the Clerk of the Court in the district in which the proceeding is pending to issue a subpoena duces tecum to any financial institution, as defined in 31 U.S.C. 5312(a), to produce books, records and any other documents at any place designated by the requesting party. All parties to the proceeding shall be notified of the issuance of any such subpoena. The procedures and limitations set forth in section 985 of this title shall apply to subpoenas issued under this section.

"(b) Service of a subpoena issued pursuant to this section shall be by certified mail. Records produced in response to such a subpoena may be produced in person or by mail, common carrier, or such other method as may be agreed upon by the party requesting the subpoena and the custodian of records. The party requesting the subpoena may require the custodian of records to submit an affidavit certifying the authenticity and completeness of the records and explaining the omission of any records called for in the subpoena.

"(c) Nothing in this section shall preclude any party from pursuing any form of discovery pursuant to the Federal Rules of Civil Procedure."

(b) CONFORMING AMENDMENT.-- The chapter analysis for chapter 46 of title 18, United States Code, is amended by adding at the end the following:

"986. Subpoenas for Bank Records."

Title II -- Money Laundering

SEC. 201. DELETION OF REDUNDANT AND INADVERTENTLY LIMITING PROVISIONS IN 18 U.S.C. 1956.

Section 1956(c)(7)(D) of title 18, United States Code, is amended --

(1) by striking "section 1341 relating to sail fraud) or section 1343 (relating to wire fraud) affecting a financial institution, section 1344 (relating to bank fraud),"; and

(2) by striking "section 1822 of the Mail Order Drug Paraphernalia Control Act (100 Stat. 3207-51; 21 U.S.C. 857)" and inserting "section 422 of the Controlled Substances Act".

SEC. 202. USE OF GRAND JURY INFORMATION FOR BANK FRAUD AND MONEY LAUNDERING FORFEITURES.

Section 3322(a) of title 18, United States Code, is amended --

(1) by striking "section 981(a)(1)(C)" and inserting "section 981(a)(1)"; and

(2) by inserting "or money laundering" after "concerning a banking law".

SEC. 203. STRUCTURING TRANSACTIONS TO EVADE CMIR REQUIREMENTS.

(a) Section 5324 of title 31, United States Code, is amended --

(1) by designating the existing provisions as subsection (a);

(2) by adding at the end the following new subsection:

"(b) No person shall for the purpose of evading the reporting requirements of section 5316 --

"(1) fail to file a report required by section 5316, or cause or attempt to cause a person to fail to file such a report;

"(2) file or cause or attempt to cause a person to file a report required under section 5316 that contains a material omission or misstatement of fact; or

"(3) structure or assist in structuring, or attempt to structure or assist in structuring, any importation or exportation of monetary instruments.".

(b) CONFORMING AMENDMENT. Section 5321(a)(4)(C) of title 31, United States Code, is amended by striking "under section 5317(d)".

(c) FORFEITURE. (1) Section 981(a) of title 18, United States Code, is amended by striking "5324" and inserting "5324(a)"; and

(2) Section 5317(c) of title 31, United States Code, is amended by inserting after the first sentence the following: "Any property, real or personal, involved in a transaction or attempted transaction in violation of section 5324(b), or any property traceable to such property, may be seized and forfeited to the United States Government."

SEC. 204. DISCLOSURE OF GEOGRAPHIC TARGETING ORDER.

Section 5326 of title 31, United States Code, is amended by adding the following new subsection:

"(c) No financial institution or officer, director, employee or agent of a financial institution subject to an order under this section may disclose the existence of or terms of the order to any person except as prescribed by the Secretary."

SEC. 205. CLARIFICATION OF DEFINITION OF FINANCIAL INSTITUTION IN 18 U.S.C. 1956 AND 1957.

(a) Section 1957(f)(1) of title 18, United States Code, is amended by striking "financial institution (as defined in section 5312 of title 31)" and inserting in lieu thereof "financial institution (as defined in section 1956)".

(b) Section 1956(c)(6) of title 18, United States Code, is amended by striking "and the regulations" and inserting in lieu thereof "or the regulations".

SEC. 206. DEFINITION OF FINANCIAL TRANSACTION IN 18 U.S.C. 1956.

Section 1956(c)(4)(A) of title 18, United States Code, is amended --

(1) by striking ", which in any way or degree affects interstate or foreign commerce," and inserting that same stricken language after "a transaction"; and

(2) by inserting after "monetary instruments" the following: ", or (iii) involving the transfer of title to any real property, vehicle, vessel, or aircraft,".

SEC. 207. OBSTRUCTING A MONEY LAUNDERING INVESTIGATION.

Section 1510(b)(3)(B)(i) is amended by striking "or 1344" and inserting in lieu thereof ", 1344, 1956, 1957, or chapter 53 of title 31 (31 U.S.C. 5311 et seq.)".

SEC. 208. AWARDS IN MONEY LAUNDERING CASES.

Section 524(c)(1)(B) of title 28, United States Code, is amended by inserting "or of sections 1956 and 1957 of title 18, sections 5313, and 5324 of title 31, and section 6050I of title 26, United States Code" after "criminal drug laws of the United States".

SEC. 209. PENALTY FOR MONEY LAUNDERING CONSPIRACIES.

Section 1956 of title 18, United States Code, is amended by inserting at the end the following new subsection:

"(g) Any person who conspires to commit any offense defined in this section or section 1957 shall be subject to the same penalties as those prescribed for the offense the commission of which was the object of the conspiracy.".

SEC. 210. TECHNICAL AND CONFORMING AMENDMENTS TO MONEY LAUNDERING PROVISION.

(a) Paragraph (a)(2) and subsection (b) of section 1956 of title 18, United States Code, are amended by striking "transportation" each place it appears and inserting in lieu thereof "transportation, transmission, or transfer";

(b) Subsection (a)(3) of section 1956 of title 18, United States Code, is amended by striking "represented by a law enforcement officer" and inserting in lieu thereof "represented".

SEC. 211. PRECLUSION OF NOTICE TO POSSIBLE SUSPECTS OF EXISTENCE OF A GRAND JURY SUBPOENA FOR BANK RECORDS IN MONEY LAUNDERING AND CONTROLLED SUBSTANCE INVESTIGATIONS.

Section 1120(b)(1)(A) of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3420(b)(1)(A)) is amended by inserting before the semicolon "or crime involving a violation of the Controlled

Substance Act, the Controlled Substances Import and Export Act, sections 1956 or 1957 of title 18, sections 5313, 5316 and 5324 of title 31, or section 6050I of title 26, United States Code".

SEC. 212. DEFINITION OF PROPERTY FOR CRIMINAL FORFEITURE

Section 982(b)(1)(A) of title 18, United States Code, is amended by striking "(c)" and inserting "(b),(c)".

SEC. 213. EXPANSION OF MONEY LAUNDERING AND FORFEITURE LAWS TO COVER PROCEEDS OF FOREIGN VIOLENT CRIMES.

Sections 981(a)(1)(B) and 1956(c)(7)(B) of title 18, United States Code, are each amended by --

(1) inserting "(i)" after "against a foreign nation involving"; and

(2) inserting "or (ii) kidnapping, robbery, or extortion" after "Controlled Substances Act)".

SEC. 214. ELIMINATION OF RESTRICTION ON DISPOSAL OF JUDICIALLY FORFEITED PROPERTY BY THE TREASURY DEPARTMENT AND THE POSTAL SERVICE.

Section 981(e) of title 18, United States Code, is amended by striking "The authority granted to the Secretary of the Treasury and the Postal Service pursuant to this subsection shall apply only to property that has been administratively forfeited."

SECTION ANALYSIS OF MONEY LAUNDERING IMPROVEMENTS ACT OF 1991

Section 101

Title 28, Section 1355, gives the district courts subject matter jurisdiction over civil forfeiture cases. The venue statutes for forfeiture actions provide for venue in the district in which the subject property is located, 28 U.S.C. §1395, or in the district where a related criminal action is pending, 18 U.S.C. §981(h). But no statute defines when a court has jurisdiction over the property that is the subject of the suit. See United States v. 23,481, 740 F. Supp. 950 (E.D.N.Y. 1990). This omission has resulted in unnecessary confusion and repetitive litigation of jurisdictional issues, see, e.g., United States v. 10,000 in U.S. Currency, 860 F.2d 1511 (9th Cir. 1988); United States v. Premises Known as Lots 50 & 51, 681 F. Supp. 309 (E.D.N.C. 1988), and results in the government's having to file multiple forfeiture actions in different districts in the same case in order to satisfy jurisdictional requirements.

This provision, styled as an amendment to 28 U.S.C. §1355, resolves these issues for all forfeiture actions brought by the government.

Subsection (b)(1) sets forth as a general rule that jurisdiction for an in rem action lies in the district in which the acts giving rise to the forfeiture were committed. This would be a great improvement over current law which requires the

government to file separate forfeiture actions in each district in which the subject property is found, even if all of the property represents the proceeds of criminal activity committed in the same place. (For example, if a Miami-based drug dealer launders his money by placing it in bank accounts in six states, the government would have to institute six separate forfeiture actions under §981 to recover the money.)

Under the early in rem cases, jurisdiction was proper only in the district where the property was "located." See Pennington v. Fourth National Bank, 243 U.S. 269, 272 (1917). This doctrine has been substantially eroded in recent years; and at least one court has speculated that the "minimum contacts" test of International Shoe may have completely replaced the territoriality question as a basis for the court's in rem jurisdiction. See United States v. $10,000 in U.S. Currency, supra. In any event, to the extent that the doctrine remains viable, it has generated litigation over various issues, such as the "location" of money seized in one district and deposited in an account in another district during the pendency of the forfeiture action. See United States v. $23,481, 740 F. Supp. 950.

Subsection (b)(1) resolves these issues by providing that the court in the district where the acts giving rise to the forfeiture occurred has jurisdiction over the forfeiture action. The subsection also makes clear this provision is not intended to affect jurisdiction based on the venue-for-forfeiture statutes

that Congress has previously enacted or may enact in the future. For example, 28 U.S.C. §1395 provides for venue wherever the property is located, and 18 U.S.C. §981(h) and 21 U.S.C. §881(j) provide for venue in a civil forfeiture case in the district where a related criminal prosecution is pending. Although they do not say so explicitly, those statutes apply not only to venue but also to jurisdiction, since it would make no sense for Congress to provide for venue in a district without intending to give the court in that district jurisdiction as well. See 130 Cong. Rec., daily ed., January 26, 1984, at S267 (statement of Senator Laxalt explaining venue-for-forfeiture provision in 21 U.S.C. §881(j)).

Subsection (b)(1) thus makes clear that these venue-for-forfeiture statutes also give the court in the relevant district jurisdiction over the defendant property even if the property was not seized in that district and is not located there. See Premises Known as Lots 50 & 51, 681 F. Supp. at 311-13 (discussing constitutionality of this approach under 21 U.S.C. §881(j)).

Subsection (b)(2) addresses a problem that arises whenever property subject to forfeiture under the laws of the United States is located in a foreign country. As mentioned, under current law, it is probably no longer necessary to base in rem jurisdiction on the location of the property if there have been sufficient contacts with the district in which the suit is filed. See United States v. $10,000 in U.S. Currency, supra. No

statute, however, says this, and the issue has to be repeatedly litigated whenever a foreign government is willing to give effect to a forfeiture order issued by a United States court and turn over seized property to the United States if only the United States is able to obtain such an order.

Subsection (b)(2) resolves this problem by providing for jurisdiction over such property in the United States District Court for the District of Columbia, in the district court for the district in which any of the acts giving rise to the forfeiture occurred, or in any other district where venue would be appropriate under a venue-for-forfeiture statute. If the acts giving rise to the forfeiture occurred in more than one district, as would commonly occur in a money laundering case, for example, jurisdiction would lie in any of those districts or in the District of Columbia.

Finally, subsection (c) addresses a recurring problem involving appeals in civil forfeiture actions. The question has two parts: 1) whether the removal of the res from the jurisdiction of the court following the entry of the district court order deprives the appellate court of jurisdiction over the appeal; and 2) whether the appellate court should take steps to ensure that the property is not diminished in value, taken out of the country, or otherwise made unavailable to the appellant in the event the appeal results in the reversal of the district court's judgment. See United States v. Parcel of Land (Woburn City Athletic Club, Inc.), ___ F.2d ____, No. 90-1752 (1st Cir.

Mar. 12, 1991), slip op. 6-9 (discussing but not deciding whether appellate court retains jurisdiction when district court does not stay forfeiture order and no longer has control over res).

The first sentence in subsection (c) resolves the first issue by providing without exception that an appellate court is not deprived of jurisdiction over an otherwise proper appeal simply because the res has been removed from the jurisdiction. This will allow successful claimants the use of their property pending appeal, and will allow the government to move the property for storage or investment purposes, without depriving the losing party of his appellate rights. The second sentence provides, however, that the appellate court is obliged to take whatever steps it deems necessary, including ordering the stay of the district court order or requiring the appellant to post an appeal bond, to ensure that while the appeal is pending, the party exercising control over the property does not take any action that would deprive the appellant of the full value of the property should the district court's judgment be reversed. The types of actions that the appellant court must seek to protect against are those listed in 21 U.S.C. §853(p).

Section 102

In 1986, Congress amended the criminal forfeiture statute, 21 U.S.C. §853, to authorize the forfeiture of substitute assets. See Section 1153(b), Anti-Drug Abuse Act of 1986, Pub. L. 99-570, 100 Stat. 3207-13. This provision, added as a new

subsection (p), applies whenever property otherwise subject to forfeiture is unavailable because it cannot be located, has been sold to a third party, has been placed beyond the jurisdiction of the court, has been diminished in value, or has been commingled with other assets. In such a case, the court is authorized to order the forfeiture of any other property of equal value. In 1988, an identical provision was added to the criminal forfeiture statute that governs forfeitures in money laundering cases, 18 U.S.C. 982(b). See Sections 6463-64, Anti-Drug Abuse Act of 1988, Pub. L. 100-690, 102 Stat. 4374-75.

In a criminal case, the purpose of forfeiture is to punish the defendant. It is an in personam action directed at the defendant personally to punish him for his criminal acts. The scope of the punishment is circumscribed by the value of the property involved in or acquired through the commission of the criminal acts, but there is no reason why the punishment can be imposed only through the forfeiture of a specific piece of property. The forfeiture of any property of equal value imposes the same punishment fairly and effectively. If this were not the rule, a defendant could escape the punishment of forfeiture merely by, for example, placing certain property out of the reach of the court or commingling it with other property so that it could not easily be identified. Under the 1986 and 1988 amendments, the court can insure that the appropriate punishment is imposed irrespective of such attempts to avoid the

consequences of criminal wrongdoing by ordering the forfeiture of some other property the defendant owns.

Forfeiture in a civil case is based on a different premise: It is intended not to punish a defendant; nor is it directed at any property owner personally. Rather it is an in rem action directed at a specific piece of property involved in criminal wrongdoing. In a civil forfeiture case, the property involved in a criminal offense is itself considered "guilty" and is forfeitable to the government regardless of the guilt or innocence of its owner. Thus it normally would be inconsistent with the theory of civil forfeiture to allow a court to order forfeiture of a substitute asset. In other words, if the theory underlying the forfeiture is that a specific piece of property is "guilty" and therefore forfeitable regardless of who its owner may be, it would make no sense for the government to order the forfeiture of another "innocent" asset when the guilty one is unavailable.

For this reason, the 1986 and 1988 substitute asset amendments applied only to the criminal forfeiture statutes, and not to the civil forfeiture statutes. That distinction should be maintained; but there are instances where strict adherence to the notion of forfeiture in civil cases only of identifiable "guilty" property makes no sense.

In the case of discrete tangible property, such as a car or boat or piece of real estate, the government should be limited in a civil case only to the forfeiture of the property actually

involved in the criminal offense. If that property is unavailable, or is diminished in value, the government is simply "out of luck" since it is title to the property, not punishment of its owner, that the government has a right to pursue.

But in cases where the property is fungible, the government should be able to pursue title to the property without having to identify the specific item or items actually involved in an offense. In a case involving a quantity of cash, for example, that had been commingled with other cash, or kept in a place where identical quantities of cash were constantly being added and subtracted, the government could no more identify the specific dollar bills subject to forfeiture than it could identify a specific ton of grain in a grain elevator or a specific pile of bricks in a brickyard. In such a case, the government should be able to obtain title through civil forfeiture to the identical property found in the place where the "guilty" property had been kept.

The courts have recognized the soundness of this argument. In United States v. Banco Cafetero Panama, 797 F.2d 1154 (2d Cir. 1986), for example, the Second Circuit held that where funds deposited in a certain bank account were subject to civil forfeiture, the government could assume that the "guilty" property remained in the account, notwithstanding subsequent deposits and withdrawals, as long as the balance in the account always remained greater than or equal to the sum subject to forfeiture. Id. at 1160. In that case, however, the court based

its holding on accepted accounting principles -- such as the theory of "first in, last out" -- rather than on any statutory authority that would be applicable to all cases involving fungible property. Experience has shown that this approach is inadequate to protect the property rights of the government in such cases.

Consider, for example, the case of a bank account involved in a money laundering scheme. Under 18 U.S.C. §981, all property involved in money laundering is forfeitable to the United States. United States v. All Monies, 754 F. Supp. 1467 (D. Haw. 1991). Thus if a money laundering offense involving a million dollars occurs on January 1, and the laundered money is deposited into a given bank account on that date, the government may seize the million dollars from the account as soon as it is deposited. Under Banco Cafetero, the government may still seize the million dollars a month later even if it can be shown that during the month of January there were numerous other deposits and withdrawals as long as the balance never fell below one million dollars. This is because the government is entitled to assume that the first deposit -- the million dollars in laundered money -- remains in the account until the last withdrawal is made.

The clever money launderer, however, being aware of the limitations of the accounting theories underlying cases such as Banco Cafetero, will choose to place his laundered funds in accounts where the balance is highly volatile. For example, he may place the laundered funds in an account held by a money

exchanger where, because of the nature of the business, the balance may vary from zero to a million dollars several times a week; yet in that case, the launderer may be assured that his money will still be available when he wants it because the balance in the account is sure to rise again to the million dollar level. Thus, to continue the above example, if a million dollars in laundered drug money is deposited into a volatile bank account on January 1, and the balance in facts dips to zero several times during the month but returns to one million dollars by the first day of February, the million dollars is still available to the criminal money launderer, but it is not forfeitable to the government.

The above scenario illustrates a weakness in the Banco Cafetero holding that can easily be exploited by money launderers, drug traffickers, and others whose criminal proceeds are subject to civil forfeiture. There is no reason why fungible property, such as the balance in a bank account, should escape forfeiture simply because the property is capable of being moved in and out of the government's view with great rapidity. If despite the apparent disbursement of the property it remains, by its fungible nature, capable of being replaced or reconstituted in identical form at any time, it should remain subject to forfeiture. Any other rule merely rewards those who contrive sophisticated shell games to hide the whereabouts of criminally derived property.

The proposed amendment adds a new section 984 to the forfeiture chapter in title 18 that is applicable to any civil forfeiture action brought under title 18 or title 21, including violations of the Bank Secrecy Act punishable by 31 U.S.C. §5322 for which forfeiture actions are undertaken pursuant to 18 U.S.C. §981. Sec 984 provides that in cases involving fungible property, property is subject to forfeiture if it is identical to otherwise forfeitable property, is located or maintained in the same way as the original forfeitable property, and not more than one year has passed between the time the original property subject to forfeiture was so located or maintained and the time the forfeiture action was initiated by seizing the property or filing the complaint, regardless of whether or not the fungible property was continuously present or available between the time it became forfeitable and the time it was seized. (The time limitation is considered necessary to ensure that the property forfeited has a reasonable nexus to the offense giving rise to the original action for forfeiture.)

Thus under the amendment, a million dollars in laundered drug money that is deposited into a bank account on January 1, would be forfeitable from that account any time within the ensuing year that the balance in the account was at least one million dollars, even if, at various times in the interim, the balance fluctuated above and below the million dollar level. Once a year had passed, however, the government could no longer reasonably claim that the million dollars in the account was the

same money that was originally forfeitable, and the forfeiture action could not be maintained.

The provision in subsection (d) carves out a very narrow exception that precludes use of section 984 to forfeit assets held in the clearing account of a foreign bank through which laundered funds moved in the past, but where such funds are no longer to be found. The exception would not apply where the foreign bank itself was engaged in the offense giving rise to the forfeiture action.

The retroactive application of these amendments, as set forth in subsection (b), is in keeping with the normal rule for construing amendments to civil statutes. See United States v. $5,644,540 in U.S. Currency, 799 F.2d 1357, 1364 n. 8 (9th Cir. 1986)(ex post facto clause does not apply to civil forfeiture case).

Section 103

This gives the Attorney General the means, by way of an administrative subpoena, to acquire evidence in contemplation of a civil forfeiture action brought under title 18 or title 21. Its provisions are taken verbatim from Section 951 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 ("FIRREA") (12 U.S.C. 1833a), Pub. L. 101-73, and it is intended to give the Attorney General the means to gather evidence in contemplation of a civil forfeiture action in a money laundering case in the same way that he may presently gather

evidence in contemplation of civil enforcement action in a FIRREA case.

As Congress recognized in enacting Section 951 of FIRREA two years ago, such subpoena authority is necessary because in the context of a civil law enforcement action there is no procedure analogous to the issuance of a grand jury subpoena that allows the government to gather evidence before the filing of a complaint.

There is ample precedent for this proposal. In RICO, for example, 18 U.S.C. §1968 provides for the issuance of a civil investigative demand to allow the government to gather evidence in contemplation of bringing a civil RICO suit. That provision was drawn from the Anti-Trust Civil Process Act, 15 U.S.C. §§ 1311-1314,[1] and was in turn the basis for §951 in FIRREA. Because the language of the present section is taken directly from FIRREA, the same limitations would apply to subpoenas issued in civil forfeiture investigations in money laundering cases as apply to civil enforcement of the bank fraud statutes.

Section 104

This provision simplifies the procedure for gathering bank records once a complaint is filed in any civil forfeiture case.

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[1] See S. Rep. No. 91-617, 91st Cong., 1st Sess. 161 (1969). For a list of other statutes that authorize the gathering of evidence by means of an administrative subpoena, see H. Rep. No. 94-1343, 94th Cong., 2nd Sess. 22 n.2 reprinted in 1970 U.S. CODE & ADMIN. NEWS 2617.

In a typical case, a wrongdoer such as a money launderer or drug trafficker, will place his illegally obtained property in bank accounts in numerous locations, often in a number of different states or districts. Presently, once a civil forfeiture complaint is filed, records pertaining to such accounts, or any other accounts that might be relevant to the forfeiture action, can be obtained only through the discovery process under the Federal Rules of Civil Procedure which requires the government to obtain a separate subpoena for the records in each and every one of the judicial districts in which the banks holding the records are located.

Thus if a forfeiture action is filed in Texas, but records relevant to the case are held by banks in Miami, New York, and Los Angeles, the United States Attorney in Texas has to seek the issuance of subpoenas duces tecum by courts in Florida, New York and California in order to obtain the records needed in the Texas action. This is because Rule 45, Fed. R. Civ. Pro., contemplates the issuance of a subpoena duces tecum only in the context of the taking of a deposition, and it requires that the subpoena be issued in the district where the deposition is to be taken.

In most civil forfeiture cases, there is no need to take the deposition of the custodian of bank records, and it is unnecessarily burdensome to have the subpoena issued by the court in the district where the bank is located when the forfeiture action is pending in some other district.

The proposed amendment would provide for the issuance of a subpoena duces tecum for bank records by the Clerk of the Court in the district where the forfeiture action was pending. Any party to the action could request the issuance of such a subpoena and would be required to give notice to all other parties. The final subsection makes clear that this section is intended to complement the discovery rules set forth in the Federal Rules of Civil Procedure and does not preclude any party from pursuing discovery under those Rules.

Section 201

Section 2706 of the Crime Control Act of 1990 added several bank fraud offenses to the definition of specified unlawful activity in §1956(c)(7)(D). The additions included 18 U.S.C. §§1005-07 and 1014. Unfortunately, this amendment contained another provision that could cause major problems in money laundering cases involving the proceeds of mail and wire fraud offenses.

Currently, under §1956(c)(7)(A), all RICO predicates are included in the definition of "specified unlawful activity". Because mail and wire fraud are RICO predicates, the laundering of the proceeds of any mail or wire fraud offense is currently prosecutable under §§ 1956 and 1957.

The 1990 amendment, however, added mail and wire fraud offenses "affecting a financial institution" to the definition of specified unlawful activity. The context of the amendment makes clear that it was the intent of Congress to expand the money laundering statute to cover banking crimes. See Congressional Record, daily ed., July 31, 1990, at H6005 (explaining section 106 of H.R.5401 and indicating that new predicate offenses were being added, not limited). Unfortunately, the wording of the amendment will allow some defendants to argue that Congress could not have intended to pass a meaningless statute and that it therefore must have intended to restrict the money laundering statute only to those fraud offenses affecting financial institutions. If that interpretation were to be accepted by a

court, the result would be to exempt the laundering of the proceeds of many white collar crimes and public corruption offenses from prosecution under the money laundering statute.

This amendment makes clear that Congress' clear intent in enacting the savings and loan provisions in the 1990 Crime Control Act was to enhance prosecutorial authority, not restrict it, and that therefore the amendment to §1956(c)(7)(D) was a drafting error that was not intended to affect the inclusion of all mail and wire fraud offenses as money laundering predicates under §1956(c)(7)(A). The amendment also strikes the duplicate reference to 18 U.S.C. §1344 as that section is also already a money laundering predicate under §1956(c)(7)(A).

Finally, this section amends the reference to the drug paraphernalia statute to conform to the redesignation of that statute as part of the Controlled Substances Act by section 2401 of the Crime Control Act of 1990.

Section 202

This section amends a provision in the FIRREA Act of 1989 to conform to forfeiture amendments relating to bank fraud and money laundering that were included in the Crime Control Act of 1990.

Under current law, enacted in FIRREA in 1989, a person in lawful possession of grand jury information concerning a banking law violation may disclose that information to an attorney for the government for use in connection with a civil forfeiture action under 18 U.S.C. §981(a)(1)(C). The purpose of this

provision is to make it possible for the government to use grand jury information to forfeit property involved in a bank fraud violation; it does not permit disclosure to persons outside of the government, nor does it permit government attorneys to use the information for any other purpose. Rather, it merely recognizes civil forfeiture actions under §981 as part of any law enforcement action arising out of a criminal investigation.

The limitation to forfeiture under "§981(a)(1)(C)," however, is obsolete. At the time FIRREA was enacted, all forfeitures relating to bank fraud violations were brought under §981(a)(1)(C). In the Crime Control Act of 1990, however, Congress added paragraphs (D) and (E) to section 981(a)(1), relating to other bank fraud violations involving the Resolution Trust Corporation. The amendment strikes the reference to paragraph (C) so that disclosure under 18 U.S.C. §3322(a) will be permitted in regard to any forfeiture under any part of §981(a)(1) including money laundering forfeitures.

Section 203

This amendment is identical to the provision that passed both the House and Senate in the 101st Congress. See §810 of S.3037, §32 of H.R.5889.

In the Anti-Drug Abuse Act of 1986, Congress created 31 U.S.C. 5324, which made it a crime to structure a transaction for the purpose of evading a currency transaction reporting requirement. The amendment creates a parallel provision

regarding the monetary instrument reports (commonly called "CMIRs") that must be filed whenever instruments having a value of more than $10,000 are imported or exported.

Under the new provision, codified as subsection (b) of §5324, it would be illegal to structure the importation or exportation of monetary instruments with the intent to evade the CMIR reporting requirement. As is the case presently for structuring cases involving currency transaction reports, the government would have to prove that the defendant knew of the existence of the CMIR reporting requirement, but it would not have to prove that the defendant knew that structuring itself had been made illegal. United States v. Hoyland, 903 F.2d 1288 (9th Cir. 1990).

The amendment made in subsection (b) is technical in nature and is intended to avoid a double penalty when forfeiture and other civil sanctions are applied to the same case.

The amendment in subsection (c) makes clear that civil forfeitures for CTR structuring offenses will continue to be covered by §981 of title 18, while civil forfeitures for CMIR offenses, including the new structuring offense, will continue to be covered by §5317 of title 31.

Section 204

This amendment passed the House and Senate in 1990 as §13 of H.R.5889 and §204 of S.3037. It corrects an oversight in §6185(c) the Anti-Drug Abuse Act of 1988, which authorized the Secretary of the Treasury to issue orders directing financial institutions in certain geographic areas to collect additional information regarding cash transactions, by providing a penalty for the disclosure of such orders.

Section 205

Currently, sections 1956 and 1957, the two principal money laundering statutes, contain different and possibly inconsistent definitions of the term "financial institution." Under §1957, a financial institution is any entity listed in 31 U.S.C. 5312. Under §1956, however, a financial institution is any entity listed in §5312 and the regulations promulgated by the Secretary of the Treasury pursuant to that statute. See 31 CFR §103.11(i) (1990). Moreover, it is unclear whether the reference to the regulations in §1956 is meant to limit the definition of "financial institution" to those entities that are listed in both the statute (i.e. 31 U.S.C. §5312) and the regulations, or whether Congress intended to include any entity referred to in either the statute or the regulations.

The amendment eliminates this confusion first by using the same definition of "financial institution" for both §1956 and

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§1957, and second by making clear that the definition includes any entity referred to in either 31 U.S.C. §5312 or the regulations promulgated thereunder.

Section 206

Section 1402 of the Crime Control Act of 1990 made several purely technical corrections to the definition of "financial transaction" in 18 U.S.C. §1956(c)(4). The present amendment makes several additional minor changes to clarify the scope of the statute.

The substantive part of the amendment expands the definition of "financial transaction" to cover the transfer of title to real property, automobiles, boats, airplanes and other conveyances. This closes a loophole in section 1956 which allows someone to escape prosecution under the money laundering statute if he or she conceals or disguises the proceeds of unlawful activity by transferring title to property without receiving any funds or monetary instruments in return.

The remaining provisions are purely technical in nature.

Section 207

Under current law, 18 U.S.C. 1510(b), it is a crime for any employee of a financial institution to disclose the contents of a grand jury subpoena for bank records where the subpoena is issued in the course of an investigation of certain crimes. The crimes covered by this obstruction of justice statute are listed in 18

U.S.C. 1510(b)(3)(B). The amendment expands the listed of covered offenses to include the federal money laundering statutes.

Section 208

This section is virtually identical to a provision that passed the Senate twice in the 101st Congress. See §701(a)(5) of S.1711; §1901(a)(5) of S.1970. It allows the Asset Forfeiture Fund to be used to pay awards for information relating to violations of the criminal money laundering laws. This amendment differs from the version that passed the Senate previously only in that in includes violations of 31 U.S.C. §5316 (relating to CMIR reports) and 26 U.S.C. §6050I (relating to Form 8300 reports) within the list of money laundering offenses.

Section 209

This amendment is virtually identical to an amendment introduced by Senator Biden that passed the Senate as §2437 of S.1970 in 1990. The amendment, which is modeled on the penalty provision for drug conspiracies in 21 U.S.C. §846, would make the penalty for money laundering conspiracy equivalent to the penalty for the substantive money laundering offense. The only difference between this provision and the Biden amendment is that this amendment would apply only to conspiracies and not to attempt offenses.

Section 210

This section includes two technical amendments passed by the Senate in 1990 as section 3722 of S.1970. The first amendment conforms the language in sections 1956(a)(2) and (b) to amendments made by section 6471 of the Anti-Drug Abuse Act of 1988, Pub. L. 100-690. That amendment clarified the scope of section (a)(2) to make clear that it covered not only physical "transportation" of property, but also the "transmission or transfer" of property, such as the transmission of funds by wire. The present amendment inserts "transmission or transfer" at the appropriate places in subsections (a)(2) and (b) so that they conform grammatically to the statute as amended in 1988.

The second amendment strikes redundant language in the "sting" provision enacted by section 6465 of the Anti-Drug Abuse Act of 1988.

Section 211

In the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA), Congress amended 12 U.S.C. 3420 to prohibit a financial institution from notifying a customer of the existence of a grand jury subpoena for records naming such customer (or any information furnished in response to the subpoena) in any case involving a crime against any financial institution or supervisory agency. Other provisions of the Right to Financial Privacy Act exempt grand jury subpoenas from the

Act's mandatory notice-to-customer provisions (12 U.S.C. 3413(i)), but except for the limited FIRREA amendment described above, the statute fails to prohibit a financial institution from voluntarily notifying a customer of the existence of a grand jury subpoena pertaining to his or her account. Such notification, of course, may alert a potential suspect of an investigation and permit the suspect to flee or conceal evidence. For that reason, the Act permits a prosecutor to obtain an order precluding such notification, upon certain showings, but the order is effective only for up to ninety days (see 12 U.S.C. 3409).

In drug and money laundering cases, the grand jury investigation is likely to be protracted and may involve numerous subpoenas for bank records. The administrative burdens in such cases imposed by the Act on overworked federal prosecutors to prepare the court papers necessary first to obtain, and then to secure extensions of, such preclusion-of-notice orders are unduly severe and unjustified. Accordingly, the amendment would expand the FIRREA addition of an automatic preclusion of notice to cover not only grand jury subpoenas for records relating to crimes against the financial institution, but also grand jury subpoenas for records relating to criminal investigations of the controlled substances and money laundering laws.

Section 212

This minor amendment merely incorporates the definition of property from 21 U.S.C. §853(b) (the drug forfeiture statute)

into statute that governs money laundering forfeitures. Section 982 already incorporates virtually all of the other procedural and definitional sections of §853. The definition of property was left out of the statute as originally enacted in 1986 because at that time §982 only permitted forfeiture of commissions and fees paid to money launderers. In 1988, however, §982 forfeitures were expanded to include the property being laundered, proceeds traceable to that property, and property used to facilitate the laundering offense. See United States v. All Monies, 754 F. Supp. 1467 (D. Haw. 1991). In light of the 1988 amendment, the definition of property in §853(b) should be incorporated into §982. This conforms to the FIRREA forfeiture amendments of 1989 which incorporated the definition of property from §853(b) into §982(b)(1)(B) for FIRREA forfeitures.

The definition of property in §853(b) is as follows: "real property, including things growing on, affixed to, and found in land; and tangible and intangible personal property, including rights, privileges, interests, claims, and securities."

Section 211

At present, 18 U.S.C. §§ 1956(c)(7)(B) and 981(a)(1)(B) are co-extensive. The former makes foreign drug crimes in which a financial transaction occurs within the United States predicates for money laundering, while the latter provides for civil forfeiture of the proceeds of such crimes if found in the United States. (Criminal forfeiture authority is automatically

established under 18 U.S.C. § 982(a)(1) for any offense under §1956.)

The proposal would expand the money laundering and civil forfeiture provisions described above so that they would also include the proceeds of foreign kidnappings, robberies, and extortions. The purpose is to make it more difficult for terrorists and other violent offenders to use the United States as a haven for the profits from their crimes.

Section 214

18 U.S.C. 981(e) governs the disposal of property forfeited by the Attorney General, the Secretary of the Treasury, or the Postal Service. The subsection provides, among other things, that the property may be retained, may be transferred to another federal agency, or may be transferred to a State or local law enforcement agency which participated directly in ny of the acts which led to the forfeiture. The three federal departments or agencies are directed equitably to share the proceeds of forfeitures with such participating State and local law enforcement authorities.

Section 6469(b) of the Anti-Drug Abuse Act of 1988 added a sentence to 18 U.S.C. 981(e) which limited the authority of the Treasury Department and the Postal Service under that subsection to "property that has been administratively forfeited." No rationale for this limitation is stated and none is apparent. Prior to the 1988 Act, Treasury enjoyed the authority to dispose

of property it seized irrespective of whether the property was later judicially forfeited in a proceeding conducted by the Attorney General. Possibly, the last sentence of subsection 981(e) was inserted because in some manner it was believed necessary to protect the litigating authority of the Attorney General. However, such litigating authority is not implicated by subsection 981(e), nor is there any other reasons why Treasury and the Postal Service should not be able to dispose of property seized within their respective jurisdictions, as to which a judicial forfeiture proceeding is later brought. Accordingly, the amendment (which passed the Senate last year as § 1911 of S. 1970) would repeal the last sentence of 18 U.S.C. 981(e) to give those agencies that authority.

W. Lee Rawls, Assistant Attorney General, U.S. Department of Justice, Letter to Hon. Charles E. Schumer, Chairman, Subcommittee on Crime and Criminal Justice, U.S. House of Representatives, Dated March 12, 1991

U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530
March 12, 1991

The Honorable Charles E. Schumer
Chairman, Subcommittee on Crime
and Criminal Justice
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman Schumer:

The Attorney General has asked me to respond to your February 26, 1991 letter concerning Attorney General Order No. 1473-91, "Delegation of Responsibilities to the Assistant Attorney General for the Office of Justice Programs," issued on February 19, 1991 (the "Order").

As you know, the management of the component bureaus of the Office of Justice Programs ("OJP") has been criticized in reports by the Department's Justice Management Division and Inspector General. Among other things, the Departmental reviews conclude that the management difficulties facing the component bureaus have been exacerbated by the influence of both Congress and special interest groups in the grant making process. See, e.g., Department of Justice, Justice Management Division, A Management Review of the Office of Justice Programs (Nov. 1990), at iii, 12, 16. In hearings held on February 20, 1991 by the Subcommittee on Government Information, Justice, and Agriculture of the House Committee on Government Operations, Congressman Wise and others also expressed concern regarding the management problems confronting the bureaus. Indeed, for some time now, there has been a general sense that the grant making process is peculiarly subject to improper political influence because of the statutory structure within which it must operate. See LaFreniere, No Justice for a Boss in Justice, Washington Post, Feb. 13, 1991, at A17, col. 4.

In light of these concerns, and to ensure that the award process is not subject to the kinds of problems that have confronted past practices of the Department of Housing and Urban Development and the savings and loan industry, the Department decided to clarify the need for and responsibility of the bureaus to base their grant and award decisions on firm and coordinated policies and priorities rather than on the varied (and potentially conflicting) individual objectives of the bureau directors and special interest requests. The Order accomplishes

that objective in two ways. First, it makes clear that the Assistant Attorney General for OJP may establish binding policies and priorities for the bureaus. Second, the Order provides that the Assistant Attorney General may reverse decisions of the bureau directors that are contrary to these policies and priorities.

As you suggest in your letter, under the statutes establishing OJP's component bureaus the Attorney General has the authority to ensure that the bureaus are discharging their responsibilities consistent with Departmental policies and priorities, whereas the bureau directors have authority to make specific determinations concerning the award of grants, cooperative agreements, and contracts. The Attorney General may, of course, delegate his general oversight authority, and it is that authority that he has delegated in the Order to the Assistant Attorney General for OJP.

Consistent with the statutory framework, the Department drafted the Order so as not to impinge upon the autonomy conferred upon the bureau directors to make specific grant award decisions. For example, the Order does not grant the Assistant Attorney General authority to direct the specific activities and actions of OJP's component bureaus on a day-to-day basis, nor does it authorize the Assistant Attorney General to exercise plenary control over the bureaus. Pursuant to the Order, the Assistant Attorney General may bar or modify a bureau grant, contract, or agreement only to the extent that it is inconsistent with general Departmental policies and priorities. The Order does not empower the Assistant Attorney General to select from among those competing award applications that fall within such policies and priorities. It does not authorize him to mandate that any grant, contract or agreement be made to a particular recipient. Furthermore, as long as a bureau is discharging its responsibilities consistent with Departmental policies and priorities, the Assistant Attorney General does not have the authority to direct or restrict the disbursement of bureau funds or otherwise interfere with the bureau director's programmatic judgment or grant making responsibilities.

As I am sure you appreciate, the responsibility assigned to the Assistant Attorney General for OJP to coordinate OJP's component bureaus must be matched by sufficient authority to ensure that they are managed effectively. We believe that the Order confers the authority necessary to achieve that and, while leaving the bureau directors the statutorily mandated degree of freedom to make programmatic judgments and individual award decisions. We expect that the Order will significantly improve the management of the bureaus. The Order should ensure the

integrity of the award process and, at the same time, protect those persons with interests in awards from unfounded charges of improper influence.

Sincerely

W. Lee Rawls
Assistant Attorney General

W. Lee Rawls, Assistant Attorney General, U.S. Department of Justice, Letter to Hon. Al McCandless, Ranking Minority Member, Subcommittee on Government Information, Justice, and Agriculture, Dated May 1, 1991

U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

May 1, 1991

The Honorable Al McCandless
Ranking Minority Member
Subcommittee on Government Information,
  Justice and Agriculture
Committee on Government Operations
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman McCandless:

This letter is in response to your February 26, 1991, letter concerning Attorney General Order No. 1473-91, "Delegation of Responsibilities to the Assistant Attorney General for the Office of Justice Programs," issued on February 19, 1991.

As you know, the management of the component bureaus of the Office of Justice Programs ("OJP") has been criticized in reports by the Department's Justice Management Division and Inspector General. See, e.g., Department of Justice, Justice Management Division, A Management Review of the Office of Justice Programs (Nov. 1990) (the "JMD Management Review"), at 12-16. The Order attempts to address those criticisms.

In response to your particular inquiry, the recommendations in the Departmental reviews included a recommendation that the Department "clarify the [Assistant Attorney General's] present position through . . . a revised Attorney General delegation of authority." JMD Management Review, at 15. In light of the management difficulties confronting OJP's component bureaus, the Department decided to follow that recommendation and clarify the need for, and responsibility of, the bureaus to base their grant and award decisions on firm and coordinated policies and priorities, rather than on the varied (and potentially conflicting) individual objectives of the bureau directors and special interest requests. The Order accomplishes that objective in two ways. First, it makes clear that the Assistant Attorney General for OJP may establish binding policies and priorities for the bureaus. Second, the Order provides that the Assistant Attorney General may reverse decisions of the bureau directors that are contrary to those policies and priorities.

As you suggest in your letter, the statutes establishing OJP's component bureaus contemplate a division of responsibilities between the Attorney General and the bureau

directors. Under those statutes, the Attorney General has the authority to ensure that the bureaus are discharging their responsibilities consistent with Departmental policies and priorities, whereas the bureau directors have authority to make specific determinations concerning the award of grants, cooperative agreements, and contracts. The Attorney General may, of course, delegate his general oversight authority, and it is that authority that he has delegated in the Order to the Assistant Attorney General for OJP.

Consistent with the statutory framework, the Order does not impinge upon the autonomy conferred upon the bureau directors to make specific grant award decisions. For example, the Order does not grant the Assistant Attorney General authority to direct the specific activities and actions of OJP's component bureaus on a day-to-day basis, nor does it authorize the Assistant Attorney General to exercise plenary control over the bureaus. Pursuant to the Order, the Assistant Attorney General may bar or modify a bureau grant, contract, or agreement only to the extent that it is inconsistent with general Departmental policies and priorities. The Order does not empower the Assistant Attorney General to select from among those competing award applications that fall within such policies and priorities. It does not authorize him to mandate that any grant, contract, or agreement be made to a particular recipient. Furthermore, as long as a bureau is discharging its responsibilities consistent with Departmental policies and priorities, the Assistant Attorney General does not have the authority to direct or restrict the disbursement of bureau funds or otherwise interfere with the bureau director's programmatic judgment or grant making responsibilities.

To correct the administrative problems that have confronted OJP's component bureaus in the past, the responsibility assigned to the Assistant Attorney General for OJP to coordinate the bureaus must be matched by sufficient authority to ensure that they are managed effectively. We believe that the Order confers the authority necessary to achieve that end, while leaving the bureau directors the statutorily mandated degree of freedom to make programmatic judgments and individual award decisions.

If we can be of further assistance, please let us know.

Sincerely,

W. Lee Rawls
Assistant Attorney General

EDWARD R. BECKER, CHAIRMAN, COMMITTEE ON CRIMINAL LAW AND PROBATION ADMINISTRATION, JUDICIAL CONFERENCE OF THE UNITED STATES, LETTER WITH ATTACHMENTS TO THOMAS BOYD, ASSISTANT ATTORNEY GENERAL FOR POLICY, U.S. DEPARTMENT OF JUSTICE, DATED JULY 23, 1990

ATTACHMENT TO QUESTION 53

COMMITTEE ON CRIMINAL LAW AND PROBATION ADMINISTRATION
OF THE
JUDICIAL CONFERENCE OF THE UNITED STATES
16613 UNITED STATES COURTHOUSE
601 MARKET STREET
PHILADELPHIA, PA 19106

JUDGE EDWARD R. BECKER
CHAIRMAN

[illegible] (FTS)
[illegible] (COMM.)

July 23, 1990

Thomas Boyd, Esq.
Assistant Attorney General
for Policy
Department of Justice
Washington, DC 20530

Dear Tom:

You will recall our presentation to you some time ago about the position of the federal judiciary with respect to mandatory minimum sentences. Our position has now been formalized in a Resolution of the Judicial Conference of the United States which is enclosed. Our concerns have been heightened by the fact that more and more mandatory minimums keep coming. *See* the recent S.1970. I enclose a copy of Chairman Wilkins position on the subject, which you may find of interest. Also of interest, I hope more than as a historical footnote, is the enclosed excerpt from the Congressional Record of September 23, 1970, in which a young Texas Congressman named George Bush introduced a bill eliminating mandatory minimum penalties and expressing concern about the position of federal judges on the subject.

We would like to continue the dialogue with DOJ if it will do any good. I enclose proposed legislation to deal with the problem. There are also alternative legislative proposals that we might discuss.

Sincerely,

Edward R. Becker

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Boyd
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cc: Judge Wilkins
Judge Broderick
Donald Chamlee

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federal judges in the Eleventh Circuit, and the bombs mailed to offices of persons engaged in Civil Rights activities, convince the Judicial Conference that a state of emergency exists as to the off-site security of judicial officers and their families, and the Judicial Conference requests that the Attorney General of the United States immediately address the situation.

COMMITTEE ON CRIMINAL LAW AND PROBATION ADMINISTRATION

MANDATORY MINIMUM SENTENCES

Observing that the Third, Eighth, Ninth, and Tenth Circuits had passed resolutions in opposition to mandatory minimum sentences, the Judicial Conference voted to urge the Congress to reconsider the wisdom of mandatory minimum sentence statutes and to restructure such statutes so that the U.S. Sentencing Commission may uniformly establish guidelines for all criminal statutes to avoid unwarranted disparities from the scheme of the Sentencing Reform Act (Title II of the Comprehensive Crime Control Act of 1984, Public Law 98-473).

PRETRIAL DETENTION CRISIS

Noting that the average number of defendants in pretrial detention has more than doubled in the past four years, and that many of these defendants must be detained at great distance from places of trial, the Conference adopted a resolution recognizing this pretrial detention crisis, and recommending that the Congress provide adequate funding to the Bureau of Prisons, the U. S. Marshals Service, and U. S. pretrial services officers to provide for adequate custody and supervision of pretrial detainees. The Conference also supported the development of alternatives to incarceration for some offenders, and broader experimentation with remedies such as video access to prisoners at remote facilities by attorneys and other court officers.

JUDICIAL CONFERENCE COMMITTEE ON CRIMINAL LAW AND PROBATION ADMINISTRATION

F. Mandatory Minimum Sentences

A report was presented by Dr. Barbara Meierhoefer of the Federal Judicial Center on the effect of mandatory minimum prison terms. The report notes that in passing the Sentencing Reform Act, Congress seemed to be endorsing the following principles for just sentencing:

1. Similarly situated offenders committing similar offenses should be punished in a similar fashion.

2. A variety of offense and offender characteristics should be considered when deciding what defines a group of similar offenders.

3. An independent Commission is better equipped than Congress to develop both the definitions of "similarly situated offenders" and the normal range of punishment that is appropriate for each group.

4. Judicial discretion, structured by the guidelines, is necessary to avoid the rote application of a particular punishment to offenders who, because of unique circumstances, are not similar to others within their assigned group. Disparity is a two-way street, with similar treatment of dissimilar offenders as unwarranted as dissimilar treatment of similar offenses.

5. The exercise of judicial discretion should be open and subject to review.

Mandatory minimum sentences follow none of these principles: They constitute a legislative requirement that a judge impose a significant prison term on any offender who falls into a group defined on the basis of only one or two aspects of the offense of conviction.

Further, by promulgating mandatory minimum sentences, Congress rsmoves the authority it delegated to the U.S. Sentencing Commission in the Sentencing Reform Act. With mandatory minimum statutes on the books, the Sentencing Commission had two options: to use its expertise independently to develop drug guidelines and let the minimums "second-guess" where they would; or to mesh their drug guidelines with the mandatory minimum terms then in effect. Conscious of the disparity that could stem from the first choice, the Commission

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opted for the latter approach.[3] The result is that the lower limit of the guideline for a first offender involved with the smallest amount of drugs which trigger the minimum sentence is the minimum term itself. Thus, the mandatory minimum sentences are inserted into the guideline structure absent the criteria and research developed for sentencing ranges for other criminal statutes.

Guidelines balance a number of mitigating and aggravating factors, and, subject to standards and review, allow impartial judges to depart to avoid unfairness in individual cases. In contrast, the mandatory minimum prison terms for drug offenses are predicated solely on the exact measurement of a "mixture" that may contain any amount of an illegal drug. Judges have no discretion to impose a lower sentence when sentencing an offender convicted under a mandatory minimum statute. Prosecutors, however, can control whether a mandatory minimum will apply (through their charging and bargaining decisions). Further, pursuant to Title 18 U.S.C. § 3553(e), the prosecutor determines whether the court has discretion to sentence below the term because of an offender's substantial assistance.[4] This

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[3] That the Commission felt bound by the mandatory minimums is evident by its attribution of most of the increase expected from their drug guidelines to the drug laws rather than the guidelines (see p.70, Supplementary Report on the Initial Guidelines and Policy Statements, June 18, 1987).

[4] The government recommendation is a prerequisite for a sentence below a minimum term.

reallocation of discretion raises concerns about whether minimum terms are being applied as they were intended.

Mandatory minimum sentences translate into expensive sanctions with an average cost of approximately $75,000 per offender for every five years of imprisonment. While mandatory minimum sentences were presumably intended for the more culpable members of larger conspiracies with networks of players, many of these offenders are also in a position to provide significant cooperation with the government which can result in sentences below the mandatory minimum term. Given the hierarchical structure of these organizations, however, the key figures cannot usually be reached without substantial cooperation from those lower down the line. The concern, in terms of disparate and unfair sentencing, is that the least sophisticated offenders who act alone or are less culpable may simply not know enough to be able to assist their way out of a minimum term.

The Committee agreed that the proliferation of mandatory minimum sentencing laws by Congress is inconsistent with federal sentencing procedures for criminal cases structured by guidelines. Minimum mandatory sentences inhibit the work of the U.S. Sentencing Commission to frame sentences in accordance with the Sentencing Reform Act of 1984. Moreover, individual instances of extremely harsh results of mandatory minimum sentences, usually cases of first offenders, quite young, with minimal roles in the offense, have been reported to the Committee or experienced by Committee members. The Third, Eighth, Ninth and

Tenth Circuits have passed resolutions in opposition to mandatory minimum sentences.

In consideration of the foregoing, the Committee recommends the Judicial Conference adopt the following resolution:

> The Judicial Conference Committee on Criminal Law and Probation Administration's ongoing review of the impact of guideline sentencing on the federal courts has disclosed that a significant number of sentences imposed are determined not by Sentencing Guidelines that reflect the judgment of the United States Sentencing Commission, but rather by mandatory minimum sentences set by the Congress. The proliferation of mandatory sentencing laws is inconsistent with the provisions of the Sentencing Reform Act. As has been noted by several Sentencing Commissioners, including its Chairman Judge Wilkins, and a number of Senators including Senators Kennedy and Thurmond, mandatory minimum sentencing laws are inconsistent with the scheme of guideline sentencing and impair the efforts of the Commission to fashion sentencing guidelines in accordance with the dictates of the Sentencing Reform Act. Additionally, district judges have reported that mandatory minimum sentences have been imposed in factual situations in which the district judge was convinced that Congress would not have intended that such defendants receive long mandatory minimum sentences without parole. Those judges have also expressed the view that sentences in such cases would be more appropriately governed by sentencing guidelines in which the Congress directed the Commission to set the guidelines at certain high levels. Such guideline sentence would, however, import some measure of flexibility into the system because the guideline structure permits departures in extraordinary cases not fitting the conventional profile of the Guideline involved.
>
> Concerned about the matter in view of the foregoing, the Judicial Conference of the United States urges the Congress to reconsider the wisdom of mandatory minimum sentencing statutes and restructure them in such a way that the U.S. Sentencing Commission may uniformly establish guidelines for all criminal statutes in order to avoid unwarranted sentencing disparities in the spirit of the Sentencing Reform Act.

WILLIAM W. WILKINS, JR., CHAIRMAN, U.S. SENTENCING COMMISSION, LETTER WITH ENCLOSURES TO SENATORS BIDEN AND THURMOND, DATED JUNE 28, 1990

UNITED STATES SENTENCING COMMISSION
1331 Pennsylvania Avenue, NW
Suite 1400
WASHINGTON D.C. 20004
(202) 662-8800

June 28, 1990

Senator Joseph R. Biden, Jr.
Chairman, Committee on
the Judiciary
United States Senate
Washington, D.C. 20510

Senator Strom Thurmond
Ranking Member, Committee
on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Senators Biden and Thurmond:

Recently, as work on the 1990 Crime bill has intensified in both the Senate and the House, the United States Sentencing Commission has received a number of inquiries relating to legislation enacting new or increased mandatory minimum sentences. Given that interest, I thought it might be appropriate for me to share with you my views as Chairman of the Commission on this important topic. While the press of events has not permitted the entire Commission to review this letter, I believe the concerns that I shall express generally reflect views held by the other members of the Commission.

First, let me preface my comments by stressing that the Commission takes as a fundamental precept the preeminent right of Congress to set policy in the vital area of sentencing. Just as Congress may make the laws, clearly so may it prescribe what it believes to be appropriate punishment. I want to emphasize, too, that if Congress decides to enact additional or increased mandatory minimums, the Commission stands ready to give them immediate recognition and do its best to integrate them into the existing guideline system. Finally, I am confident that the Commission firmly agrees with the plain intent of mandatory minimum proposals that serious acts of criminal misconduct must be met with an equally serious societal response. The clear message of the 1984 Sentencing Reform Act and subsequent congressional expressions of sentencing policy is that when tough measures are required to deal with crime the Commission should not hesitate to embrace them, and I believe the guidelines we have issued reflect our responsiveness to that message.

Having made these observations, however, I want to share with you my concern that enactment of additional mandatory minimums does not further the landmark sentencing reforms Congress overwhelmingly enacted in 1984 when it

established the United States Sentencing Commission and directed it to promulgate a comprehensive set of mandatory sentencing guidelines. For this reason, I would respectfully urge the Congress to be especially cautious about enacting further mandatory minimums and to give full consideration to alternative approaches outlined below that may in the end prove more effective.

Three principal facts underlie my belief that the Congress might want to avoid additional mandatory minimums. The first is that Congress created the United States Sentencing Commission precisely so that there might be an expert body to develop and constantly refine a comprehensive body of effective, consistent, and rational sentencing law. The Commission issued its initial guidelines in November 1987 and since then has begun the careful and time-consuming process of refining those guidelines to make sure they are achieving their congressionally mandated results. Among other things, the Commission is required by statute to ensure to the extent possible that the federal sentencing guidelines are effective in deterring crime, adequately reflect the seriousness of the offense, are fair, and above all reduce the unwarranted sentencing disparity that so concerned Congress when it created the Commission.

To achieve these results, the Commission must continually gather quantitative and qualitative data to assess sentencing practices and their effects. This process, in turn, requires close monitoring of the actions and views of key players in the federal criminal justice community (judges, attorneys, probation officers), and it requires a carefully formulated and wide-ranging research agenda by the Commission's research office. It is not an overstatement to say that the Commission has already garnered greater expertise in this extremely sensitive policy area than any governmental body has ever had before. In short, the Commission is well positioned to evaluate and implement comprehensive, workable sentencing policy, and it has been created by Congress for this very purpose. Enactment of mandatory minimums tends to short-circuit the congressionally-intended role of the Commission in perfecting an overall sentencing scheme that is rational, cohesive, and effective.

The second fact underlying my view that Congress should cautiously proceed before enacting further mandatory minimums is that there is a widespread perception among observers of the federal criminal justice system that some of the mandatory minimums already enacted are straining the proper functioning of that system. From the Commission's most immediate perspective, we know that some mandatory minimums have a tendency to distort the rationality of the guidelines system for similar offense conduct, some versions of which may be subject to a mandatory minimum because of the statutory violation charged and other forms of which are not. For example, because of a recently enacted mandatory minimum, a defendant convicted of first offense, simple possession of 5 grams of crack is subject, under the statute and the guidelines, to a minimum sentence of 5 years imprisonment. In contrast, a defendant

convicted of first offense possession of 4.9 grams of crack or any amount of heroin or other controlled substance is by statute subject to a maximum sentence of 1 year. Obviously, these statutory limitations impede the design of a guidelines scheme that rationally enhances punishment according to the quantity and dangerousness of the drug involved.

Beyond these structural problems for the guidelines themselves, many observers also believe that mandatory minimums are undermining effective sentencing practices in other ways. Mandatory minimum sentences do not permit consideration of an offender's possibly limited/peripheral role in the offense and other factors historically found relevant to sentencing decisions (such as whether the defendant voluntarily made restitution or took other actions exhibiting sincere remorse for his criminal conduct). These factors have been carefully defined and limited in the guidelines to rationalize and structure sentencing discretion. But because mandatory minimums do not permit this kind of structured flexibility, many participants in the federal criminal justice system have concluded that mandatory minimums simply sweep too broadly. This view has been endorsed by the Judicial Conference and four Circuit Conferences, the Judicial Conference's Committee on Criminal Law and Probation Administration, the congressionally chartered Federal Courts Study Committee, vast numbers of the defense bar, and privately, by a significant number of federal prosecutors.

As a result, several undesirable effects appear to be occurring. Most importantly, the perception that mandatory minimums sweep too broadly may be encouraging some prosecutors and judges to find ways to circumvent them. This in turn could mean that sentencing disparity--and as Congress found, the disrespect for the law that sentencing disparity breeds--may be reentering the federal sentencing picture through mandatory minimums.

Ironically, an additional practical drawback of mandatory minimum statutes stems from the fact that some judges tend to view the mandatory minimum sentence as the presumptive sentence. The Commission has learned from its close observation of sentencing practices that some judges, confronted with a fixed minimum sentence, may ignore important aggravating factors present in the case that should increase the sentence above the mandatory minimum.

The third fact underlying my recommendation that Congress act cautiously with respect to additional mandatory minimums is that the Commission has recently initiated a detailed study to determine through hard, empirical research how mandatory minimum sentences are in fact affecting sentencing practices. Sentencing is crucial to effective efforts to combat crime. The Commission's study, which should allow initial findings by next June, will help us learn whether mandatory minimums help, or as many members of the federal court family now complain, hinder those efforts. I should note

that early anecdotal information does suggest that mandatory minimums contribute to circumvention of congressional intent through creative plea negotiation.

In the meantime, Congress need not ignore what it believes are important areas for increased attention. First, because Congress has given the Commission strong research capabilities, Congress may direct the Commission to study and report on appropriate sentencing policy for specific crimes of concern. Far from being an academic exercise, the Commission's ability to implement the results of its study through guideline amendments means that knowledge developed through research can and will be applied in the real world to combat crime in the most effective manner.

If Congress believes that adequate information already exists to support increased sanctions for a given crime, Congress may also legislatively direct the Commission to draft guidelines reflecting Congress' sense that sentences for that crime be increased. By working its will through tougher guidelines instead of statutory mandatory minimums, the potential problems of mandatory minimums discussed earlier would be significantly reduced.

Generally speaking, Congress may implement such a directive through either of two methods. The first approach is to employ flexible language by, for example, directing that the Commission "promulgate guidelines, or amend existing guidelines, to provide for a substantial period of incarceration" for a particular offense. Congress used this approach in the Commission's enabling legislation (see, e.g., 28 U.S.C. § 994(h) and (i)) and most recently in the Financial Institution Reform, Recovery and Enforcement Act of 1989 (FIRREA). The advantage of this approach is that it allows the Commission to apply its own knowledge and expertise to the matter, thereby ensuring that the effectiveness of the new increased penalty is maximized.

A second way Congress may direct the Commission to increase penalties through the guidelines is more specific. Under this approach Congress may mandate that the Commission increase guideline "offense levels" in chapter 2 of the Guidelines Manual for specified crimes. Congress used this approach in the Anti-Drug Abuse Amendments Act of 1988.

Examples of statutory directives previously used by Congress to employ both of these approaches are enclosed with this letter. Should members wish to consider an alternative approach to a mandatory minimum proposal such as those I have just outlined, our General Counsel is available at (202) 626-8500 to provide drafting assistance.

I very much appreciate the opportunity to share these thoughts as well as the continuing support Congress has provided the Commission as it seeks to implement the lofty goals of the Sentencing Reform Act.

With highest personal regards, I am

Sincerely,

Billy Wilkins

William W. Wilkins, Jr.
Chairman

Enclosure

cc: Members of the United States Senate
Committee on the Judiciary

General Statutory Directives to the Commission

28 U.S.C. §994(h) and (i):

> (h) The Commission shall assure that the guidelines specify a sentence to a term of imprisonment at or near the maximum term authorized for categories of defendants in which the defendant is eighteen years old or older and--
>
> > (1) has been convicted of a felony that is [a crime of violence or specified drug offense];
> >
> > (2) has previously been convicted of two or more prior felonies, each of which is [a crime of violence or specified drug offense].
>
> (i) The Commission shall assure that the guidelines specify a sentence to a substantial term of imprisonment for categories of defendants in which the defendant--
>
> > (1) has a history of two or more prior Federal, State, or local felony convictions for offenses committed on different occasions . . .

FIRREA (Pub. L. 101-73, §961(m)):

> [T]he United States Sentencing Commission shall promulgate guidelines, or amend existing guidelines, to provide for a substantial period of incarceration for [a fraud, theft, embezzlement, or related offense] that substantially jeopardizes the safety and soundness of a federal insured financial institution

Specific Statutory Directives to the Commission

Anti-Drug Abuse Amendments Act of 1988 (Pub. L. 100-690, §6482(c)):

> Pursuant to its authority under section 994(p) of title 28, United States Code . . . the United States Sentencing Commission shall promulgate guidelines, or shall amend existing guidelines, to provide that--
>
> > (A) a defendant convicted of violating section 342 of title 18, United States Code, under circumstances in which death results, shall be assigned an offense level under chapter 2 of the sentencing guidelines that is not less than level 26 . . . .

alternative 1

REPEAL OF MANDATORY MINIMUM SENTENCES

SECTION 1. SHORT TITLE

This Act may be cited as the "Mandatory Minimum Repeal Act of 1990".

SEC. 2. REPEAL OF MANDATORY MINIMUM SENTENCES

(a) Repeal. — Each requirement that a sentence of imprisonment not be less than a term of years specified in the following provisions of law is repealed:

(1)	7 U.S.C.A. § 195	(14)	18 U.S.C.A. § 2381
(2)	7 U.S.C.A. § 2024	(15)	18 U.S.C.A. § 3147
(3)	12 U.S.C.A. § 617	(16)	19 U.S.C.A. § 283
(4)	12 U.S.C.A. § 630	(17)	21 U.S.C.A. § 622
(5)	15 U.S.C.A. § 1245	(18)	21 U.S.C.A. § 841
(6)	18 U.S.C.A. § 844	(19)	21 U.S.C.A. § 844
(7)	18 U.S.C.A. § 924	(20)	21 U.S.C.A. § 845a
(8)	18 U.S.C.A. § 929	(21)	21 U.S.C.A. § 960
(9)	18 U.S.C.A. § 1658	(22)	46 U.S.C.A. § 3318
(10)	18 U.S.C.A. § 2113	(23)	46 U.S.C.A. App. § 1225
(11)	18 U.S.C.A. § 2251	(24)	47 U.S.C.A. § 220
(12)	18 U.S.C.A. § 2251A	(25)	49 U.S.C. § 1191
(13)	18 U.S.C.A. § 2252	(26)	49 U.S.C. App. § 1472

(b) Effective Date. — Subsection (a) shall take effect on the date on which the guidelines promulgated by the United States Sentencing Commission pursuant to section 3 become effective under the provisions of section 994(p) of Title 28, United States Code, but in no event later than November 1, 1991.

SEC. 3. MINIMUM GUIDELINE RANGES FOR DESIGNATED OFFENSES

Pursuant to its authority under Section 994(p) of title 28, United States Code, and Section 21 of the Sentencing Act of 1987 (Sec. 21 of Pub. L. 100-182), the United States Sentencing Commission shall promulgate guidelines or amend existing guidelines for the offenses listed under section 2(a) of this act to assure that defendants convicted of such offenses are assigned an offense level that results in a sentencing range that reflects the Congressional assessment of the seriousness of the offense as expressed in the mandatory sentences of imprisonment applicable prior to the repeal of such mandatory sentences by this act.

SEC. 4. MODIFICATION OF AN IMPOSED MANDATORY MINIMUM TERM OF IMPRISONMENT. Section 3582(c) of Title 18, United States Code, is amended--

(a) by deleting the period at the end of subparagraph "(2)" and adding the word "and" to the end thereto; and

(b) by adding a new subparagraph "3", as follows:

"(3) in the case of a defendant who has been sentenced to a term of imprisonment pursuant to a statute that required the imposition of a minimum term of imprisonment, upon motion of the defendant or the Director of the Bureau of Prisons, or on its own motion, the court may reduce the term of imprisonment, after considering the factors set forth in section 3553(a) to the extent that they are applicable, if the court finds that a reduction below the applicable sentencing range established by the Sentencing Commission is warranted and is consistent with the provisions of section 3553(b) and any applicable policy statements issued by the Sentencing Commission."

EXCERPT FROM THE CONGRESSIONAL RECORD, SEPTEMBER 23, 1970

any given case to fit the crime. Current penalties have little or no deterrent value, as illustrated by the alarming increase in drug related arrests over the past decade. In addition, several Federal offenses have been invalidated by the courts. This new penalty scheme is realistic and enforceable.

The flow of drugs across our borders and through our ports of entry is being vigorously attacked by our enforcement personnel, but they need better tools. This bill contains controls over the import and export of drugs, which will make the job easier for law enforcement agents who guard our borders. We will know a lot more now about what is coming in or going out, and be able to follow and trace shipments of drugs to detect diversion. The Attorney General will be able to exercise better control over the type and amount of drugs coming into this country, a control now largely lacking.

This is a far-reaching and complex bill, and I cannot begin to detail here the many major and minor reforms H.R. 18583 will work as to existing law. I can only state with certainty that the people, who have waited too long for the passage of this measure are watching us with anticipation and hope. The time to act is now, and I am sure that the bipartisan support we give this legislation will demonstrate to the Nation that we are on the road to recovery from the disease of drug abuse.

Mr. BUSH. Mr. Chairman, respect for and obedience of the law are values which most parents have, for generations, tried to impart to their children. Moderate success has resulted, but the failures in this area explain in part why every civilized nation has criminal laws and penal sanctions to encourage lawful conduct.

Why various people break the law is only partly understood and, even where we can appreciate the root causes, eliminating them is indeed a long-range solution. In the meantime, as always, efficient law enforcement must hold the line against dangerous, antisocial conduct. Nowhere is this more true than in the area of drug abuse.

Mr. Chairman, H.R. 18583, the Comprehensive Drug Abuse Prevention and Control Act of 1970, is a much needed measure which contains extensive reforms in the area of drug abuse control. Of particular interest is the complete overhaul of the existing Federal criminal provisions applicable to drug-related activities, which I believe will improve law enforcement and foster greater respect for the law.

The bill eliminates mandatory minimum penalties except for professional criminals. Contrary to what one might imagine, however, this will result in better justice and more appropriate sentences. For one thing, Federal judges are almost unanimously opposed to mandatory minimum sentences because they remove a great deal of the court's discretion. In the vast majority of cases which reach the sentencing stage today, the bare minimum sentence is levied—and in some cases, less than the minimum mandatory is given. This is particularly true in cases where addict possessors who sell to support their habits are involved, and a great deal of plea bargaining in this area results. Probations and outright dismissals often result.

Philosophical differences aside, practicality requires a sentence structure which is generally acceptable to the courts, to prosecutors, and to the general public. H.R. 18583 does this in several ways. Elimination of the mandatory minimums is one and, at the other end of the scale, severe maximums with mandatory minimums for the true professional is another. In between, penalties are graduated and flexible to cover the type of offense and the type of offender.

An example is the offense of simple possession, which for any drug is the same—a misdemeanor punishable by 1 year confinement and $5,000 fine. Special first offender treatment is also available so that a judge may place a deserving person found guilty of simple possession on probation so that he may eventually earn a dismissal of the charges. On the other hand, one who commits the offense again is exposed to double the original penalties, and the special first offender treatment is no longer available.

As far as trafficking in drugs, penalties vary according to the substance. An offender who deals in the more dangerous items like heroin will face up to 15 years in prison and a $25,000 fine, all of which is doubled for a second offender. One who traffics in the least dangerous substances like codeine cough syrup, however, will face a maximum of 1 year and $5,000.

There are many other crimes provided for in the prohibited acts portion of this bill, such as fraudulent use of registration numbers, unlawful use of a communication facility to facilitate the commission of a felony under the act, misuse of required symbols or labels, and many others in a comprehensive range of offenses which will render unlawful all drug-related activities which would defeat the purposes of the bill. These offenses have been formulated under the power to regulate interstate commerce, and use of the taxing power—a power which in recent times has come under increasing court attack in this area—has been repealed.

The penalties in this bill are not only consistent with each other, but with the rest of the Federal criminal law—something which cannot be said for present drug laws. As a result, we will undoubtedly have more equitable action by the courts, with actually more convictions where they are called for, and fewer disproportionate sentences.

Mr. Chairman, these penal reforms have been a long time in coming. Now that we have them, let us not delay in moving them to the President's desk.

Mr. BURTON of Utah. Mr. Chairman, I am sure none in this Chamber would deny the serious nature of the drug abuse problem in this country. As legislators, we must admit to a certain amount of negligence in not having squarely faced up to the problem with the enactment of suitable laws.

Now, however, we have before us H.R. 18583, a comprehensive bill which would extensively revise the present law which has proven inequal to the task of controlling drug abuse. I strongly support this measure, and particularly endorse the aids to control and law enforcement contained in the bill.

H.R. 18583 provides, in part B of title II, a system of control which will undoubtedly result in reduction of drug availability in the illicit market. When taken together with the registration provisions of part C, this system should provide a major step forward of a kind we have not seen in more than 50 years of legislative efforts directed at drug abuse problems.

Under part B, the Attorney General will decide whether a particular substance should be subjected to the effective controls provided in the act. He must consider all factors before making his decision, including the medical and scientific advice of the Secretary of Health, Education, and Welfare. If he decides in favor of control, he must then determine into which schedule to place the substance.

Part B contains schedules which include all substances initially subject to control, listed in order of medical utility and potential for abuse. For example, schedule I contains heroin, LSD, and marihuana, all of which are subject to abuse and have no accepted medical use in this country. The Attorney General must accordingly select the appropriate schedule for the drug he wishes to control, since both control mechanisms and penalties for wrongful use depend to some extent on the schedule in which a drug appears.

This use of schedules with specific criteria for inclusion, plus authority for the Attorney General to add to or delete from these schedules, represents a tremendous improvement over present methods of control. In addition, the procedures specified for the control process represent a streamlining of existing procedures under the Food, Drug, and Cosmetic Act which have been cumbersome and time consuming. Under the bill, the Attorney General is allowed to move expeditiously where the situation warrants, with due regard for the rights of other parties. While hearings are provided, a dangerous or potentially dangerous substance could be controlled pending the outcome of hearings and possible judicial review.

Mr. Chairman, this control process is vital to the bill and to our efforts to prevent a proliferation of drugs on the streets which may readily come into the hands of our malleable young people. The system established by part B of title II, H.R. 18583, is just one illustration of the many worthwhile provisions of this bill. We should waste no further time in voting to pass this measure.

Mr. MacGREGOR. Mr. Chairman, I would like to indicate my strong support for H.R. 18583, the Comprehensive Drug Abuse Prevention and Control Act of 1970.

This bill is not, by any means, the entire solution to the widespread drug abuse problem faced by this Nation today. However, it represents a rational and logical approach to limited aspects

of the problem, and is particularly valuable for its reforms of existing control and law enforcement provisions which apply in the area of drug abuse.

H.R. 18583 would make the entire control and enforcement scheme cohesive through the use of the power to regulate interstate commerce as applied to all dangerous substances. The power to tax a questionable device, to begin with, is no longer relied upon. This means, in short, a unified system of laws and derivative regulations. This will directly benefit not only law enforcement personnel but also the judiciary, private industry, and the general public.

The bill combines a system of classifying drugs according to schedules with a systematic registration plan in order to control the legitimate production and distribution of all drugs in this country. I am certain these systems will drastically reduce the tremendous diversion of legitimately manufactured drugs into illegal channels.

A substantial revision of the criminal laws relating to drugs is also contained in this bill, and I fully endorse both the concept and the penalties provided. Under the bill we will have rational enforcement and appropriate sentencing instead of varied and inconsistent situations as today.

The bill contains many administrative reforms as well, which would clarify the enforcement powers of the Attorney General and agents of the Bureau of Narcotics and Dangerous Drugs. The situation with regard to subpoenas, warrants, powers of arrest, and other related activities is made definite and gives the enforcement people the type of tools they need to handle the criminals who make their living preying on the unfortunate victims of this dread affliction.

And finally, the bill provides tighter controls over the import and export of all drugs controls which to many respects are presently lacking.

The Committee on Interstate and Foreign Commerce and the Ways and Means Committee are to be commended for their diligent efforts in producing a bill of this magnitude. It now remains for us to approve it forthwith, so that the executive branch may get on with its business of eradicating the drug abuse problem in America.

Mr. Chairman, recently, the Public Health and Welfare Subcommittee of the Interstate and Foreign Commerce Committee completed extensive hearings on various drug abuse and control proposals. From these hearings emerged a clean bill which I believe will be most valuable in dealing with the drug abuse crisis in America today.

The Comprehensive Drug Abuse Prevention and Control Act, H.R. 18583, is a bill which strikes a balance between the law enforcement and the scientific community. It contains proposals encompassing all important areas of concern: treatment and rehabilitation, prevention, research, and control of dangerous substances. Many of the programs are extensions of existing law and many are new.

Title I of the bill is generally concerned with rehabilitation and education. It would amend the Community Mental Health Centers Act to include Federal support for community mental health centers treating not only narcotic addicts but also persons with any drug abuse or drug dependence problems. Considering the scope of drug abuse today, we cannot limit Federal aid to narcotic treatment alone—we must provide aid to combat the whole problem in an attempt to solve the whole problem, as proposed in this bill. I have especially come to realize, in viewing the drug abuse problem in New York City, that there is a crying need in the community for facilities to help that growing population of individuals who will swallow, sniff or shoot any substance they can get their hands on.

In tune with the expanded coverage of the program, authorizations are increased by $75 million over current authorizations for the next 3 years.

Also under title I, authority is extended to include the treatment of dangerous drug abusers and drug persons in Public Health Service hospitals.

A drug abuse education program to be coordinated by the National Institute of Mental Health is also included in title I. Under this proposal, grants could be made to public and private groups for the development of educational materials and school programs. NIMA would serve as the national center for collection and dissemination of materials on drugs, for public information programs and for coordination of Federal activities in the field. I am sure that most of you share my belief that an intensive Federal program in support of drug abuse education, as provided in this bill, is a vital part of any successful effort in preventing drug abuse. It is hard to believe that if young people were truly aware of the consequences of drug abuse, they would not be experimenting with drugs as they are. It is certainly our duty to arm young Americans with information so they will be able to make a rational choice about drugs.

Title II of H.R. 18583 grew out of the Nixon administration's proposal, which came up last year, for a reorganization of all existing narcotic and dangerous drug control laws. The administration wished, with due respect, to replace these laws with a single, unified statute. Generally speaking, the proposals—both as submitted by the administration and as reflected in the Commerce Committee bill—parallel existing law. However, both also make substantial changes. Among changes common to both proposals would be:

First, a more sophisticated classification of controlled drugs;

Second, stricter regulations, in some cases, of the manufacture and distribution of controlled substances;

Third, greater control over the export of depressants and stimulants; and

Fourth, a complete revision of the existing penalty structure, including making any first-time simply possession offense a misdemeanor, regardless of the drug involved, and easing penalties for second-time possessions offenses. Also, mandatory minimum penalties would be eliminated, except for a special class of professional offenders.

Additionally, title II provides for the establishment of a Committee on Marihuana, a panel of experts appointed by the Secretary of Health, Education, and Welfare and the Attorney General. The committee would be charged with developing us up to date on marihuana research findings, identifying gaps in our knowledge, and examining the effects of marihuana use on our society in general. This is a small but important part of this bill primarily due to the controversy surrounding this drug.

I have given you but a brief outline of the Comprehensive Drug Abuse Prevention and Control Act, but, I think a general idea of its major proposals. Mr. STAGGERS and the members of his committee deserve our praise and thanks for their hard work in developing such a fine proposal.

Mr. BOLAND. Mr. Chairman, the epidemic of drug abuse is a grave threat to the health and well-being of our Nation—especially to the young people of our Nation. Despite convincing warnings of the physical, emotional and social consequences of drug abuse, the numbers of experimenters are growing yearly. The most recent estimates of the National Institutes of Mental Health indicate that 20 million have used marihuana, hundreds of thousands abuse depressants and stimulants, and as many as 150,000 are addicted to narcotic drugs. It is impossible to tell how many have suffered a deep personal tragedy from what began as a casual experiment.

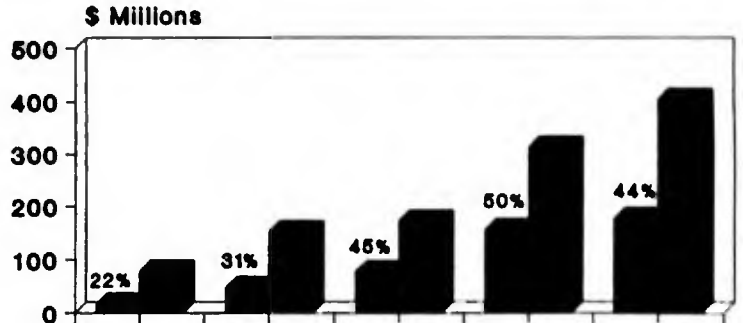
There are a limited number of approaches to attack this problem—preventive steps, aimed at stopping experimentation before it starts; control, to regulate the supply and availability of drugs; rehabilitation, to lead individuals away from drug dependence and addiction. It is my conviction that the Federal Government must make a concentrated effort in all of these areas.

The bill now before us makes such an effort. It goes beyond the law-enforcement-oriented Controlled Dangerous Substances Act, backed by the administration and passed by the Senate early this year. H.R. 18583 contains the much needed revision and synthesis of existing narcotic and dangerous drug statutes found in the Senate bill, but changes some of its more questionable provisions. In addition, the Comprehensive Drug Abuse Prevention and Control Act is truly comprehensive, granting new authority to the Federal Government in research, education, treatment, and rehabilitation.

Certainly, the gravity of the drug abuse problem in the United States today merits a review of the law. In the last 55 years, more than 50 pieces of legislation have been enacted to control the legitimate manufacture of drugs and illicit trafficking, forming a confusing network of outdated statutes, hard to efficiently implement. H.R. 18583 condenses this network into one piece of legislation, reforming control provisions to meet the problem today. It recognizes

EXECUTIVE OFFICE FOR ASSET FORFEITURE STATISTICS

COMPARISON OF EQUITABLE SHARING PAYMENTS TO NET INCOME



	FY 1986	FY 1987	FY 1988	FY 1989	FY 1990
CASH PAYMENTS	17.1	47.3	77.2	155.9	176.8
NET INCOME	77.8	152.6	172.2	313.1	404.4

CASH PAYMENTS NET INCOME

NOTE: Net income for 1989 excludes $222.0 million received as a result of the Drexel Burnham Lambert case.

EXECUTIVE OFFICE FOR ASSET FORFEITURE

ASSETS FORFEITURE FUND

EQUITABLE SHARING OBLIGATIONS
(Dollars in Millions)

	AS A PERCENTAGE OF NET INCOME			
	NET INCOME [a]	CASH SHARED	% OF NET INCOME	VALUE OF PROPERTY SHARED [b]
1985 ACTUAL	$ 24.9	$ 0.0	0.0	$ 0.0
1986 ACTUAL	77.8	17.1	22.0	5.4
1987 ACTUAL	152.6	47.3	31.0	9.2
1988 ACTUAL	172.2	77.2	44.8	15.0
1989 ACTUAL [c]	313.4	156.2	49.8	16.4
1990 ACTUAL	406.7	178.9	44.0	23.5
1991 (OCT-FEB) [d]	180.8	90.8	50.2	.
TOTAL	1,328.4	567.5	42.7	69.5

	AS A PERCENTAGE OF TOTAL OBLIGATIONS			
	TOTAL COSTS	CASH SHARED	% OF COSTS	VALUE OF PROPERTY SHARED
1985 ACTUAL	$ 2.3	$ 0.0	0.0	$ 0.0
1986 ACTUAL	41.7	17.1	41.0	5.4
1987 ACTUAL	115.3	47.3	41.0	9.2
1988 ACTUAL	160.9	77.2	48.0	15.0
1989 ACTUAL [c]	271.8	156.2	57.5	16.4
1990 ACTUAL	330.1	176.9	53.6	23.5
1991 (OCT-FEB)	152.2	90.8	59.7	.
TOTAL	1,074.3	565.5	52.6	69.5

[a] Net Income reflects net deposits less asset management expenses, third party payments and case related expenses.

[b] The value of property shared is in addition to cash shared from the Fund.

[c] Net income for 1989 excludes $222.0 million received as a result of settlement of the Drexel Burnham Lambert case.

[d] Net income for 1991 excludes $198.5 million received in the Michael Milkin case.

PREPARED BY THE EXECUTIVE OFFICE FOR ASSET FORFEITURE
March 18, 1991

ASSETS FORFEITURE FUND
EQUITABLE SHARING DISBURSEMENTS
(by State)
as of March 31, 1991

STATE or TERRITORY	USMS REGION		FY 1986	FY 1987	FY 1988	FY 1989	FY 1990	FY 1991	TOTAL TO DATE	% of TOTAL SHARING	% OF NET DEPOSITS
ALABAMA	ATLANTA		$141,966	$422,945	$798,432	$2,155,855	$3,415,732	$1,479,709	$8,414,639	1.43%	56.30%
ALASKA	SEATTLE		0	125,947	339,812	501,416	759,694	244,478	1,971,347	0.34%	27.90%
ARIZONA	HOUSTON		0	166,076	645,125	669,163	1,508,166	1,675,706	4,664,233	0.79%	23.97%
ARKANSAS	ST. LOUIS		9,752	356,033	498,454	208,248	922,958	640,435	2,635,879	0.45%	73.88%
CALIFORNIA	SAN DIEGO		7,449,097	20,118,253	32,373,037	44,058,936	52,555,186	31,549,093	188,103,603	32.00%	54.03%
COLORADO	ST. LOUIS		9,450	1,042,042	312,841	2,211,493	6,729,105	950,296	11,255,226	1.91%	57.45%
CONNECTCUT	NEW YORK		378,844	908,519	1,905,893	4,719,246	3,046,048	571,523	11,530,074	1.96%	58.46%
DELAWARE	NEW YORK		0	200,824	330,876	334,219	319,398	379,410	1,564,726	0.27%	43.33%
DIST of COLUMBIA	NEW YORK		0	40,251	66,487	240,660	568,162	(5,890)	909,670	0.15%	24.38%
FLORIDA	MIAMI		167,600	1,252,085	3,732,708	3,369,936	6,308,373	4,047,784	18,878,486	3.21%	10.05%
GEORGIA	ATLANTA		654,876	1,132,768	1,970,316	3,019,112	3,702,605	5,119,207	15,598,884	2.65%	35.84%
GUAM	SAN DIEGO		0	0	0	5,949	15,650	0	21,599	0.00%	40.37%
HAWAII	SEATTLE		7,072	394,488	33,906	256,105	594,671	1,308,901	2,595,143	0.44%	17.32%
IDAHO	SEATTLE		0	17,217	65,661	64,993	209,479	65,822	423,173	0.07%	44.70%
ILLINOIS	CHICAGO		229,910	1,546,338	820,136	2,691,389	6,822,023	2,661,331	14,771,127	2.51%	34.69%
INDIANA	CHICAGO		20,000	75,927	310,855	891,935	1,401,463	614,525	3,314,706	0.56%	42.79%
IOWA	ST. LOUIS		10,305	31,238	254,979	244,894	664,776	332,948	1,539,141	0.26%	51.24%
KANSAS	ST. LOUIS		0	147,277	77,903	201,710	961,873	306,962	1,695,725	0.29%	58.73%
KENTUCKY	CHICAGO		62,080	444,568	321,595	617,060	1,432,615	590,734	3,468,653	0.59%	55.42%
LOUISIANA	HOUSTON		446,206	392,465	1,122,314	1,875,051	4,099,107	954,948	8,890,091	1.51%	42.26%
MAINE	NEW YORK		0	53,640	399,242	1,001,196	353,730	210,245	2,018,053	0.34%	57.99%
MARYLAND	NEW YORK		293,252	165,376	517,608	1,519,409	4,451,270	5,165,915	12,112,829	2.06%	67.28%
MASSACNUSETTS	NEW YORK		0	487,305	1,430,294	2,249,502	2,532,886	1,113,793	7,813,781	1.33%	36.91%
MICHIGAN	CHICAGO		444,089	458,358	1,460,094	5,502,499	3,698,639	2,073,404	13,637,082	2.32%	35.75%
MINNESOTA	ST. LOUIS		34,085	38,907	1,406,452	886,452	1,794,086	681,579	4,841,560	0.82%	48.11%
MISSISSIPPI	ATLANTA		23,247	182,156	741,072	1,053,493	1,266,638	491,895	3,758,501	0.64%	51.20%
MISSOURI	ST. LOUIS		690,999	794,269	1,745,996	2,810,469	4,090,941	2,496,808	12,629,481	2.15%	66.75%
MONTANA	SEATTLE		0	14,369	0	15,870	137,952	0	168,192	0.03%	13.52%
NEBRASKA	ST. LOUIS		31,094	87,014	47,129	376,279	323,561	158,618	1,023,694	0.17%	73.61%
NEVADA	SAN DIEGO		6,510	151,397	1,197,570	464,719	328,708	101,874	2,250,778	0.38%	33.60%
NEW HAMPSHIRE	NEW YORK		24,477	14,747	13,348	110,296	325,677	26,484	515,029	0.09%	34.85%
NEW JERSEY	NEW YORK		24,881	172,097	381,410	1,321,062	715,215	724,197	3,338,861	0.57%	30.09%
NEW MEXICO	HOUSTON		0	72,657	692,874	1,011,133	705,688	1,002,794	3,485,145	0.59%	37.87%
NEW YORK	NEW YORK		$521,604	$7,139,576	$3,832,813	$31,662,840	$9,765,257	$8,698,927	61,621,017	10.48%	9.55%
N.CAROLINA	ATLANTA		1,095,211	1,324,738	1,476,605	3,359,683	5,809,456	2,783,783	15,849,477	2.70%	62.73%
N.DAKOTA	ST. LOUIS		0	8,350	0	0	135,259	41,921	185,529	0.03%	58.84%

ASSETS FORFEITURE FUND
EQUITABLE SHARING DISBURSEMENTS
(by State)
as of March 31, 1991

STATE or TERRITORY	USMS REGION		FY 1986	FY 1987	FY 1988	FY 1989	FY 1990	FY 1991	TOTAL TO DATE	% of TOTAL SHARING	% OF NET DEPOSITS
N. MARIANA IS.			0	0	0	0	0	0	0	0.00%	0.00%
OHIO	CHICAGO		167,580	751,946	1,163,036	1,809,013	3,017,952	3,652,290	10,561,816	1.80%	54.26%
OKLAHOMA	ST. LOUIS		0	445,009	1,137,319	921,302	1,960,545	1,278,886	5,743,061	0.98%	52.16%
OREGON	SEATTLE		200,219	426,980	869,867	1,859,311	4,102,500	1,665,033	9,123,909	1.55%	69.70%
PENNSYLVANIA	NEW YORK		13,616	1,399,065	1,082,344	1,934,773	3,140,976	731,493	8,302,268	1.41%	21.36%
PUERTO RICO	MIAMI		0	59,392	124,653	0	373,990	0	558,036	0.09%	2.16%
RHODE ISLAND	NEW YORK		0	119,615	412,492	999,747	910,930	414,549	2,857,333	0.49%	58.18%
S.CAROLINA	ATLANTA		109,000	0	35,602	4,052,820	2,048,855	736,905	6,983,183	1.19%	78.70%
S.DAKOTA	ST. LOUIS		0	0	0	23,569	35,019	55,261	113,849	0.02%	15.87%
TENNESSEE	ATLANTA		21,160	523,418	1,043,545	843,807	3,038,952	1,681,852	7,152,735	1.22%	53.27%
TEXAS	HOUSTON		3,504,311	2,674,024	5,503,570	13,806,651	19,300,487	14,725,523	59,512,565	10.13%	44.10%
UTAH	SEATTLE		0	106,941	686,474	206,123	330,606	23,205	1,353,349	0.23%	70.35%
VERMONT	NEW YORK		37,293	29,828	46,538	452,623	318,777	779,320	1,664,379	0.28%	59.49%
VIRGIN ISLANDS	MIAMI		0	0	0	0	75,000	38,146	113,146	0.02%	6.11%
VIRGINIA	NEW YORK		21,998	146,329	1,240,230	2,490,700	4,462,292	4,195,004	12,556,552	2.14%	51.81%
WASHINGTON	SEATTLE		9,000	221,871	603,700	486,818	1,170,394	400,043	2,891,826	0.49%	22.18%
WEST VIRGINIA	CHICAGO		8,055	207,059	844,087	155,535	444,434	850,102	2,509,272	0.43%	61.16%
WISCONSIN	CHICAGO		259,136	184,504	660,712	1,638,932	1,793,369	999,290	5,535,943	0.94%	44.81%
WYOMING	SEATTLE		0	0	124,013	535,784	55,636	8,598	724,032	0.12%	74.75%
FOREIGN GOVT.			0	0	0	2,000,000	0	0	2,000,000	0.34%	N/A
OTHER			0	0	0	0	0	0	0	0.00%	0.00%
	GRAND TOTALS:		17,127,972	47,276,200	76,902,020	155,897,780	179,052,760	111,495,660	587,752,391	100.00%	42.32%

TOTAL AVG.

ASSETS FORFEITURE FUND
EQUITABLE SHARING DISBURSEMENTS
(by District)
as of March 31, 1991

#	JUDICIAL DISTRICT		CITY	FY 1986	FY 1987	FY 1988	FY 1989	FY 1990	FY 1991	TOTAL TO DATE	% of TOTAL SHARING	% OF NET DEPOSITS
1	ALABAMA	NORTHERN	BIRMINGHAM	$100,695	$268,007	$306,988	$1,107,121	$955,733	762,310	$3,500,854	0.80%	49.53%
2	ALABAMA	MIDDLE	MONTGOMERY	0	8,199	203,419	203,437	497,503	129,493	1,042,051	0.18%	58.01%
3	ALABAMA	SOUTHERN	MOBILE	41,271	146,739	288,025	845,297	1,962,496	587,905	3,871,734	0.66%	63.67%
6	ALASKA		ANCHORAGE	0	125,947	339,812	501,416	759,694	244,478	1,971,347	0.34%	27.90%
8	ARIZONA		PHOENIX	0	166,076	845,125	669,163	1,508,164	1,675,706	4,664,233	0.79%	23.97%
9	ARKANSAS	EASTERN	LITTLE ROCK	9,752	286,532	483,999	177,359	786,198	456,413	2,200,253	0.37%	77.17%
10	ARKANSAS	WESTERN	FORT SMITH	0	69,501	14,455	30,889	136,759	184,022	435,626	0.07%	80.80%
11	CALIFORNIA	NORTHERN	SAN FRANCISCO	1,176,932	5,957,988	2,121,404	4,938,823	7,614,072	5,496,333	27,305,552	4.65%	55.27%
12	CALIFORNIA	CENTRAL	LOS ANGELES	5,601,029	12,866,808	25,748,109	31,900,829	37,437,460	20,190,994	133,745,230	22.76%	62.50%
97	CALIFORNIA	EASTERN	SACRAMENTO	0	477,844	2,124,858	3,167,251	1,733,470	2,644,017	10,147,440	1.73%	68.37%
98	CALIFORNIA	SOUTHERN	SAN DIEGO	671,136	815,612	2,378,666	4,052,033	5,770,184	3,217,749	16,905,380	2.88%	24.18%
13	COLORADO		DENVER	9,450	1,042,042	312,841	2,211,493	6,729,105	950,296	11,255,226	1.91%	57.45%
14	CONNECTCUT		NEW HAVEN	378,844	908,519	1,905,893	4,719,246	3,046,048	571,523	11,530,074	1.96%	58.46%
15	DELAWARE		WILMINGTON	0	200,824	330,876	334,219	319,398	379,410	1,564,726	0.27%	43.33%
16	DIST of COLUMBIA		WASH., D.C.	0	40,251	66,487	240,660	568,162	(5,890)	909,670	0.15%	24.38%
4	FLORIDA	SOUTHERN	MIAMI	125,895	953,576	2,259,374	1,430,082	3,078,848	2,830,158	10,677,933	1.82%	7.52%
17	FLORIDA	NORTHERN	PENSACOLA	41,705	251,303	127,110	945,324	526,031	395,124	2,286,597	0.39%	31.68%
18	FLORIDA	MIDDLE	JACKSONVILLE	0	47,205	1,346,224	994,531	2,703,494	822,503	5,913,956	1.01%	15.31%
19	GEORGIA	NORTHERN	ATLANTA	429,787	749,941	987,395	1,516,332	1,913,447	3,883,409	9,480,312	1.61%	30.05%
20	GEORGIA	MIDDLE	MACON	10,685	233,500	329,735	514,910	532,038	695,418	2,316,286	0.39%	43.65%
21	GEORGIA	SOUTHERN	SAVANNAH	214,404	149,328	653,186	987,870	1,257,119	540,380	3,802,286	0.65%	57.04%
22	HAWAII		HONOLULU	7,072	394,488	33,906	256,105	594,671	1,308,901	2,595,143	0.44%	17.32%
23	IDAHO		BOISE	0	17,217	65,661	64,993	209,479	65,822	423,173	0.07%	44.70%
24	ILLINOIS	NORTHERN	CHICAGO	133,110	1,176,096	603,951	1,390,435	4,758,389	1,880,404	9,922,386	1.69%	28.05%
25	ILLINOIS	SOUTHERN	E. ST. LOUIS	116,800	318,350	107,460	1,054,832	1,350,702	318,572	3,266,717	0.56%	69.43%
26	ILLINOIS	CENTRAL	SPRINGFIELD	0	51,892	108,725	246,122	712,932	462,354	1,582,024	0.27%	63.24%
27	INDIANA	NORTHERN	SOUTH BEND	20,000	73,927	167,810	470,316	765,951	274,241	1,772,245	0.30%	53.74%
28	INDIANA	SOUTHERN	INDIANAPOLIS	0	2,000	143,045	421,619	635,513	340,284	1,542,461	0.26%	34.68%
29	IOWA	NORTHERN	CEDAR RAPIDS	0	0	105,993	187,669	422,883	179,949	896,494	0.15%	73.17%
30	IOWA	SOUTHERN	DES MOINES	10,305	31,238	148,986	57,226	241,894	152,999	842,647	0.11%	36.13%
31	KANSAS		TOPEKA	0	147,277	77,903	201,710	961,873	306,962	1,695,725	0.29%	58.73%
32	KENTUCKY	EASTERN	LEXINGTON	62,080	180,993	150,966	373,999	843,279	307,845	1,918,962	0.33%	66.06%
33	KENTUCKY	WESTERN	LOUISVILLE	0	263,575	170,629	243,062	589,336	283,090	1,549,691	0.26%	46.21%
34	LOUISIANA	EASTERN	NEW ORLEANS	122,519	252,986	680,296	897,920	2,850,894	674,509	5,479,125	0.93%	37.61%
35	LOUISIANA	WESTERN	SHREVEPORT	139,212	118,808	163,909	640,140	956,426	217,960	2,236,455	0.38%	64.90%
95	LOUISIANA	MIDDLE	BATON ROUGE	184,475	20,671	278,109	336,991	291,787	62,479	1,174,511	0.20%	38.89%
36	MAINE		PORTLAND	0	53,640	399,242	1,001,196	353,730	210,245	2,018.053	0.34%	57.99%

ASSETS FORFEITURE FUND
EQUITABLE SHARING DISBURSEMENTS
(by District)
as of March 31, 1991

#	JUDICIAL DISTRICT		CITY	FY 1986	FY 1987	FY 1988	FY 1989	FY 1990	FY 1991	TOTAL TO DATE	% of TOTAL SHARING	% OF NET DEPOSITS
37	MARYLAND		BALTIMORE	293,252	165,376	517,608	1,519,409	4,451,270	5,165,915	12,112,829	2.06%	67.28%
38	MASSACHUSETTS		BOSTON	0	487,305	1,430,294	2,249,502	2,532,886	1,113,793	7,813,781	1.33%	36.91%
39	MICHIGAN	EASTERN	DETROIT	444,089	23,825	1,408,783	5,179,762	3,391,191	1,811,675	12,259,324	2.09%	36.61%
40	MICHIGAN	WESTERN	GRAND RAPIDS	0	434,533	51,311	322,737	307,448	261,729	1,377,758	0.23%	29.56%
41	MINNESOTA		MINNEAPOLIS	34,085	38,907	1,406,452	886,452	1,794,086	681,579	4,841,560	0.82%	48.11%
42	MISSISSIPPI	NORTHERN	OXFORD	0	0	0	40,979	574,577	276,820	892,376	0.15%	35.20%
43	MISSISSIPPI	SOUTHERN	JACKSON	23,247	182,156	741,072	1,012,514	692,061	215,074	2,866,125	0.49%	59.63%
44	MISSOURI	EASTERN	ST. LOUIS	608,878	391,012	1,197,116	1,923,074	3,221,600	1,247,176	8,588,856	1.46%	64.94%
45	MISSOURI	WESTERN	KANSAS CITY	82,121	403,257	548,880	887,395	869,341	1,249,632	4,040,625	0.69%	70.96%
46	MONTANA		BILLINGS	0	14,369	0	15,870	137,952		168,192	0.03%	13.52%
47	NEBRASKA		OMAHA	31,094	87,014	47,129	376,279	323,561	158,618	1,023,694	0.17%	73.61%
48	NEVADA		LAS VEGAS	6,510	151,397	1,197,570	466,719	328,708	101,874	2,250,778	0.38%	33.60%
49	NEW HAMPSHIRE		CONCORD	24,477	14,747	13,348	110,296	325,677	26,484	515,029	0.09%	34.85%
50	NEW JERSEY		NEWARK	24,881	172,097	381,410	1,321,062	715,215	724,197	3,338,861	0.57%	30.09%
51	NEW MEXICO		ALBUQUERQUE	0	72,657	692,874	1,011,133	705,688	1,002,794	3,485,145	0.59%	37.87%
52	NEW YORK	NORTHERN	UTICA	0	57,253	456,526	901,403	1,653,828	460,234	3,529,243	0.60%	58.19%
53	NEW YORK	EASTERN	BROOKLYN	78,977	2,945,442	846,566	24,016,798	2,170,760	5,835,240	35,893,783	6.11%	26.56%
54	NEW YORK	SOUTHERN	NEW YORK	262,675	4,032,573	1,990,487	5,346,726	2,992,120	1,177,202	15,801,783	2.69%	3.19%
55	NEW YORK	WESTERN	BUFFALO	179,953	104,308	539,234	1,397,913	2,948,549	1,226,252	6,396,209	1.09%	72.41%
56	N.CAROLINA	EASTERN	RALEIGH	82,541	305,600	642,771	1,423,343	3,232,622	1,299,076	6,986,153	1.19%	58.65%
57	N.CAROLINA	MIDDLE	GREENSBORO	353,528	830,632	671,184	1,829,513	1,749,152	493,133	5,927,142	1.01%	81.32%
58	N.CAROLINA	WESTERN	ASHEVILLE	659,143	188,506	162,651	106,627	827,681	991,574	2,936,182	0.50%	48.42%
59	N.DAKOTA		FARGO	0	8,350	0	0	135,259	41,921	185,529	0.03%	58.84%
60	OHIO	NORTHERN	CLEVELAND	0	74,794	254,057	345,612	1,123,476	992,091	2,990,030	0.51%	43.97%
61	OHIO	SOUTHERN	CINCINNATI	167,580	677,152	908,979	1,263,400	1,894,477	2,660,198	7,571,787	1.29%	59.78%
62	OKLAHOMA	NORTHERN	TULSA	0	82,713	115,473	366,912	794,970	214,806	1,574,875	0.27%	47.68%
63	OKLAHOMA	EASTERN	MUSKOGEE	0	68,000	0	8,186	297,590	57,127	430,902	0.07%	34.51%
64	OKLAHOMA	WESTERN	OK CITY	0	294,296	1,021,845	546,204	867,986	1,006,953	3,737,284	0.64%	57.86%
65	OREGON		PORTLAND	200,219	426,980	869,867	1,859,311	4,102,500	1,665,033	9,123,909	1.55%	69.70%
66	PENNSYLVANIA	EASTERN	PHILADELPHIA	13,616	266,119	887,544	949,998	2,029,946	555,893	4,703,116	0.80%	20.07%
67	PENNSYLVANIA	MIDDLE	SCRANTON	0	1,125,588	143,983	255,063	241,334	115,588	1,881,556	0.32%	15.27%
68	PENNSYLVANIA	WESTERN	PITTSBURGH	0	7,358	50,818	729,712	869,696	60,012	1,717,595	0.29%	55.24%
69	PUERTO RICO		SAN JUAN	0	59,392	124,653	0	373,990		558,036	0.09%	2.16%
70	RHODE ISLAND		PROVIDENCE	0	119,615	412,492	999,747	910,930	414,349	2,857,333	0.49%	58.18%
71	S.CAROLINA		COLUMBIA	109,000	0	35,602	4,052,820	2,048,855	736,905	6,983,183	1.19%	78.70%
73	S.DAKOTA		SIOUX FALLS	0	0	0	23,569	35,019	55,261	113,849	0.02%	15.87%
74	TENNESSEE	EASTERN	KNOXVILLE	0	242,521	137,469	139,205	336,828	77,701	933,724	0.16%	35.62%

ASSETS FORFEITURE FUND
EQUITABLE SHARING DISBURSEMENTS
(by District)
as of March 31, 1991

#	JUDICIAL DISTRICT		CITY	FY 1986	FY 1987	FY 1988	FY 1989	FY 1990	FY 1991	TOTAL TO DATE	% of TOTAL SHARING	% OF NET DEPOSITS
75	TENNESSEE	MIDDLE	NASHVILLE	0	0	251,386	2,250	1,250,216	351,579	1,855,430	0.32%	40.27%
76	TENNESSEE	WESTERN	MEMPHIS	21,160	280,897	654,691	702,352	1,451,908	1,252,573	4,363,581	0.74%	70.41%
77	TEXAS	NORTHERN	DALLAS	446,706	702,297	2,530,873	3,907,974	5,053,434	3,078,604	15,719,888	2.67%	61.00%
78	TEXAS	EASTERN	TYLER	25,537	78,586	422,855	437,570	1,682,567	525,824	3,172,939	0.54%	39.21%
79	TEXAS	SOUTHERN	HOUSTON	2,997,763	601,763	1,583,103	8,038,706	8,754,209	7,018,973	28,994,518	4.93%	39.06%
80	TEXAS	WESTERN	SAN ANTONIO	34,304	1,291,378	966,740	1,420,401	3,810,276	4,102,122	11,625,220	1.98%	43.28%
81	UTAH		SALT LAKE CITY	0	106,941	686,474	206,123	330,606	23,205	1,353,349	0.23%	70.35%
82	VERMONT		BURLINGTON	37,293	29,828	46,538	452,623	318,777	779,320	1,664,379	0.28%	59.49%
83	VIRGINIA	EASTERN	NORFOLK	17,882	108,359	955,373	2,122,151	3,854,309	3,900,021	10,958,097	1.86%	50.83%
84	VIRGINIA	WESTERN	ROANOKE	4,116	37,970	284,857	368,549	607,982	294,982	1,598,456	0.27%	59.73%
85	WASHINGTON	EASTERN	SPOKANE	0	151,405	148,677	51,140	347,137	(9,780)	688,579	0.12%	44.17%
86	WASHINGTON	WESTERN	SEATTLE	9,000	70,466	455,023	435,677	823,257	409,823	2,203,247	0.37%	19.20%
87	WEST VIRGINIA	NORTHERN	FAIRMONT	8,055	97,416	85,618	34,727	230,869	99,475	556,161	0.09%	74.71%
88	WEST VIRGINIA	SOUTHERN	CHARLESTON	0	109,643	758,468	120,808	213,566	750,626	1,953,111	0.33%	58.15%
89	WISCONSIN	EASTERN	MILWAUKEE	259,136	184,504	494,478	1,519,787	1,432,816	809,939	4,700,660	0.80%	42.85%
90	WISCONSIN	WESTERN	MADISON	0	0	166,234	119,145	360,553	189,351	835,283	0.14%	60.31%
91	WYOMING		CHEYENNE	0	0	124,013	535,784	55,636	8,598	724,032	0.12%	74.75%
5	N. MARIANA IS.			0	0	0	0	0		0	0.00%	0.00%
93	GUAM		AGANA	0	0	0	5,949	15,650		21,599	0.00%	40.37%
94	VIRGIN ISLANDS		ST. THOMAS	0	0	0	0	75,000	38,146	113,146	0.02%	6.11%
	FOREIGN GOVT			0	0	0	2,000,000	0		2,000,000	0.34%	N/A
	OTHER			0	0	0	0	0		0	0.00%	0.00%
		GRAND TOTALS:		17,127,972	47,276,200	76,902,020	155,897,780	179,052,760	111,495,660	587,752,391	100.00%	45.42%

TOTAL AVG

Memorandum of Understanding Between Office of Enforcement Counsel, Environmental Protection Agency, and the Federal Bureau of Investigation

MEMORANDUM OF UNDERSTANDING

This Memorandum constitutes an agreement between the Office of Enforcement Counsel (OEC), Environmental Protection Agency (EPA), and the Federal Bureau of Investigation (FBI).

A. PURPOSE

The purpose of this agreement is to establish a policy between the FBI and the OEC for EPA with regard to the referral and investigation of criminal matters of mutual interest.

B. APPLICABLE AUTHORITY

Under Title 42, United States Code, Section 6928, the EPA has been given the responsibility for conducting criminal investigations of alleged violations of the Resource Conservation and Recovery Act. This relates to the illegal treatment, transportation, storage and disposal of hazardous waste substances.

Under Title 28, United States Code, Section 533, 534, 535, and Title 28, Code of Federal Regulations, Section 0.85 (a), the FBI is charged with the duty of investigating violations of the law of the United States and collecting evidence in cases in which the United States is or may be a party in interest, except in cases in which such responsibility is by statute or otherwise specifically assigned to another investigative agency.

C. POLICY

This Memorandum of Understanding resulted from an EPA request for the FBI to enter investigations involving illegal transportation, discharge or disposal of hazardous waste and toxic substances which present a significant environmental harm or human health hazard. Ordinarily, such cases will be

investigated within the framework of the Resource Conservation and Recovery Act. On occasion, criminal sanctions contained in the Clean Water Act, 33 U.S.C. §1319(c); the Toxic Substances Control Act, 15 U.S.C. §2615(b); and the comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §9603 will also be applicable. These cases will be referred from the OEC to the FBI on a headquarters level. The FBI will furnish investigative resources, and EPA will furnish investigative and technical resources to conduct these investigations. The agreement will not affect existing procedures for the referral for investigation of cases falling within the FBI's traditional jurisdiction.

D. THE RESPONSIBILITIES OF OEC, EPA

OEC, EPA will provide the technical support required for each investigation referred to the FBI. Specifically, EPA will conduct any necessary onsite inspections, as well as sampling and analyzing those compounds as required during the field investigation. EPA also agrees to provide technical training as requested by the FBI, to the extent possible. Finally, EPA will provide investigative resources when available to assist in joint investigations.

E. RESPONSIBILITIES OF THE FBI

1. The FBI will have the primary role in investigating prosecutable violations of those cases referred to the FBI by EPA involving the illegal treatment, transportation, storage and disposal of hazardous waste. The primary objectives of the FBI investigations will be:

a) To provide evidence leading to the prosecution of individuals believed to have violated Federal criminal statutes.

b) As an ancillary result of the criminal investigation, to provide through the OEC, information potentially useful to EPA in taking any necessary corrective action for the purpose of avoiding the reoccurrence of circumstances leading to the case referral.

-CONTINUED OVER-

c) As an ancillary result of the criminal investigation, to provide through the OEC, information useful to EPA in taking specific administrative action against individuals or entities who were involved in the investigation.

2. The FBI will give each investigation referred from EPA a high priority investigative status. The FBI also recognizes the importance of conducting an expeditious investigation and reporting the results of such in these situations. The FBI will provide OEC with a copy of the headquarters communication initiating each investigation. In addition, the FBI will notify the OEC of developments during the investigation upon request, unless disclosure might endanger the safety of the FBI or other personnel, or otherwise have a potentially adverse impact upon the investigation.

3. The FBI will promptly notify the OEC of the initiation of an investigation that was predicated on other than a OEC referral, unless disclosure might endanger the safety of the FBI or other personnel, or otherwise have a potentially adverse impact upon the investigation. In this regard, the FBI recognizes that EPA's ability to provide timely technical support for such investigations depends on early notification of the initiation and pursuit of such investigations.

4. The FBI will furnish a written summary of findings at the conclusion of an investigation and the nature of judicial action, if any taken. If administrative action is being considered by EPA, the FBI will, upon written request, provide for the exclusive use of EPA, existing detailed investigative data less any Federal grand jury or other materials, the disclosure of which is not deemed to be in the best interest of FBI operations. Information obtained through the Federal grand jury process will be extracted from data furnished to EPA.

5. The FBI will furnish, at the conclusion of an investigation and upon written request identifying the exact data needed, FBI investigative documents and Special Agent testimony for use in administrative proceedings consistent with regulations contained in Department of Justice order 81-80, effective December 4, 1980, concerning the release of departmental documents in Federal or state proceedings.

-CONTINUED OVER-

6. The following services will be provided to OEC, in accord with this Memorandum of Understanding, by the FBI:

a) Appropriate indices checks.
b) National Crime Information Center inquiries, where warranted.
c) Appropriate identification record searches.
d) To the extent possible, the FBI will provide desired relevant training to OEC personnel.
e) Any other services normally available to Federal investigative agencies, with the exception of laboratory work.

F. RESPONSIBILITIES CONCERNING JOINT ENDEAVORS BY THE FBI AND OEC

1. The FBI and OEC may agree to enter into joint investigative endeavors, including undercover operations, in appropriate and limited circumstances. The specific details of each endeavor including resources to be committed, the delegation of responsibility, liabilities, etc., will be determined prior to the commencement of these endeavors. While differing circumstances will result in varied arrangements from project to project, certain conditions will remain static.

a) Participating personnel will be supervised by their respective agencies; operational control will be the responsibility of the FBI.

b) Only one evidentiary document, such as a record of interview, will be prepared. Any contact with the news media, such as press releases, will be coordinated and agreed to in advance by both the FBI and the OEC.

c) In the case of undercover operations a separate written agreement for each will be required setting forth the responsibilities of both the OEC and the FBI as they pertain to manpower, economic and other resources to be committed and/or other conditions necessitated by the operation.

-CONTINUED OVER-

Memorandum of Understanding
OEC, EPA, FBI

2. Close and continuous liaison will be maintained between the OEC and the FBI in an attempt to identify areas that require mutual attention. In this regard, both the OEC and the FBI will designate an appropriate individual to serve as the primary contact in the liaison function.

Charles P. Monroe
Assistant Director
Criminal Investigative Division
Federal Bureau of Investigation

date 2/25/82

William A. Sullivan, Jr.
Enforcement Counsel
Environmental Protection Agency

date 3/11/82

MEDIA ACTIVITY, FISCAL YEARS 1983–1990, ENTITIES AND INDIVIDUALS INDICTED

MEDIA ACTIVITY FY83-FY90

ENTITIES AND INDIVIDUALS INDICTED

MEDIA	FY83	FY84	FY85	FY86	FY87	FY88	FY89	FY90	FY91	TOTAL
Mult./RCRA/CERCLA	14	19	7	4	3					47
Mult. + RCRA				1	25					26
RICO							11			11
RCRA/CERCLA/RICO						9				9
RCRA/CERCLA/CWA						3		1	1	5
RCRA/CERCLA			1	6	2	1		3	10	23
RCRA	9	8	11	14	16	41	21	43	24	187
RCRA/RHA/Ref.Act.							1			1
CERCLA	3	1	2	7			1	3	1	18
RCRA/CWA					6	6		12	3	27
CERCLA/CWA				2						2
CERCLA/CAA						12	8	5		25
RCRA/FIFRA								5		5
ALL RCRA/CERCLA	26	28	21	34	52	72	42	72	39	386
OCSLA							3	1		4
CWA	4	5	8	25	15	23	36	43	31	190
MULT./CWA					4					4
CWA/RHA				5	1	1	3	3		14
SDWA								1	1	2
REFUSE ACT/RHA	1				1	1				3
TSCA	7	6		7	7	3	7	3		40
CAA			8	5	8	2	2	1	3	29
FIFRA/FDCA						3				3
FIFRA	2	4	2			3		3		14
FIFRA/MBTA						1				1
MBTA									1	1
TITLE 18				16	38	15	7	7	12	95
HMTA			1							1
BU./LAND MGT.REGS					1					1
PRETRIAL DIVERSION (No media charge)				2						2
ATOMIC ENERGY ACT							1			1
TOTAL	40	43	40	94	127	124	101	134	87	790

~~A.~~ There are 790 cases and the individual conviction and sentencing information has to be retrieved manually on each of them. We will supply this information as soon as it is available.

~~In the meantime, we can provide you a statistical profile of the program~~ From the beginning of FY83 through March, 1991, the Department ~~of Justice~~ has recorded 790 environmental criminal indictments and 578 guilty pleas and convictions have been entered. A total of $64,331,425 in criminal penalties has been assessed. More than 350 years of imprisonment have been imposed of which over 158 years account for actual time served.

	Indictments	Pleas/Convictions
FY 83	40	40
FY 84	43	32
FY 85	40	37
FY 86	94	67
FY 87	127	86
FY 88	124	63
FY 89	101	107
FY 90	134	85
FY 91	87	57
TOTAL	790	578

The conviction rate (based on the number of entities that reach final disposition statue for each year) follows:

FY 83	88%	
FY 84	78%	(41 entities)
FY 85	80%	(46 entities)
FY 86	94%	(71 entities)
FY 87	93%	(96 entities)
FY 88	88%	(71 entities)
FY 89	76%	(140 entities)
FY 90	97%	(88 entities)

	Fed.Penalties Imposed	Prison Terms	Actual Confinement
FY 83	$ 341,100	11 yrs.	5 yrs.
FY 84	384,290	5 yrs. 3 mos.	1 yr. 7 mos.
FY 85	565,850	5 yrs. 5 mos.	2 yrs. 11 mos.
FY 86	1,917,602	124 yrs. 2 mos. 2 days	31 yrs. 4 mos. 12 days
FY 87	3,046,060	32 yrs. 4 mos. 7 days	14 yrs. 9 mos. 22 days
FY 88	7,091,876	39 yrs. 3 mos. 1 day	8 yrs. 3 mos. 7 days
FY 89	12,750,330	51 yrs. 25 mos.	36 yrs. 14 mos.
FY 90	* 29,977,508	71 yrs. 11 mos. 3 days	47 yrs. 13 mos. 1 day
FY 91	8,256,809	8 yrs. 16 mos.	8 yrs. 16 mos.
TOTAL	$ 64,331,425	346 yrs. 69 mos.13 days	152 yrs. 77 mos. 42 days
		(351 yrs. 9 mo. 13 days)	(158 yrs. 5 mos. 12 days

* This total includes a $22 million forfeiture that was obtained in a RICO/mail fraud case against 3 individuals and 6 related waste disposal and real estate development companies. A major portion of this forfeiture is expected to be designated for hazardous waste cleanup upon liquidation of assets. Included in the jail terms are two 12 year/7 month sentences against two individuals in the same RICO/mail fraud case.

Foreign Language Bonus Program, Foreign Language Test Total and Score Grid (1811's Only)

ATTACHMENT #1

FOREIGN LANGUAGE BONUS PROGRAM
FOREIGN LANGUAGE TEST TOTAL AND SCORE GRID (1811's only)

LANGUAGE	TOTAL TESTED	S 0	C 0+	O 1	R 1+	E 2	2+	3	3+	4	4+	5
ARABIC (EGYPT)	1	0	0	0	0	1	0	0	0	0	0	0
CHINESE (CANT)	7	0	0	2	0	0	0	3	0	1	1	0
CHINESE (MAND)	5	0	0	2	1	1	1	0	0	0	0	0
CHINESE (WU)	0	0	0	0	0	0	0	0	0	0	0	0
DANISH	2	0	0	1	0	0	0	0	0	0	1	0
DUTCH	1	0	0	0	0	1	0	0	0	0	0	0
FRENCH	28	0	2	1	4	1	8	4	5	3	0	0
GERMAN	22	0	1	2	4	9	2	2	1	1	0	0
GREEK	8	1	0	0	0	0	0	1	3	3	0	0
HAITIAN CREOLE	2	0	0	0	0	0	0	0	0	0	0	2
HINDI	0	0	0	0	0	0	0	0	0	0	0	0
INDONESIAN	0	0	0	0	0	0	0	0	0	0	0	0
ITALIAN	18	0	0	0	2	1	1	6	5	3	0	0
JAPANESE	2	0	0	0	1	1	0	0	0	0	0	0
KOREAN	2	0	0	0	1	0	0	1	0	0	0	0
LAO	0	0	0	0	0	0	0	0	0	0	0	0
NORWEGIAN	0	0	0	0	0	0	0	0	0	0	0	0
PERSIAN - FARSI	0	0	0	0	0	0	0	0	0	0	0	0
POLISH	2	0	0	0	0	0	0	0	1	1	0	0
PORTUGUESE	7	0	0	0	0	2	2	3	0	0	0	0
RUSSIAN	1	0	0	0	0	0	0	0	0	0	1	0

FOREIGN LANGUAGE BONUS PROGRAM
FOREIGN LANGUAGE TEST TOTAL AND SCORE GRID (1811's only)

LANGUAGE	TOTAL TESTED	S 0	C 0+	O 1	R 1+	E 2	2+	3	3+	4	4+	5
SPANISH	464	3	3	23	30	67	80	113	70	52	14	9
SWEDISH	1	0	0	1	0	0	0	0	0	0	0	0
TAGALOG	3	0	0	0	0	0	0	2	1	0	0	0
THAI	29	1	2	3	5	5	11	2	0	0	0	0
TURKISH	4	0	0	0	0	3	1	0	0	0	0	0
UKRANIAN	2	0	0	0	0	0	0	2	0	0	0	0
URDU	1	0	0	0	1	0	0	0	0	0	0	0
VIETNAMESE	1	0	0	0	0	0	0	0	0	0	1	0
*** Total ***	613	5	8	35	49	92	106	139	86	64	18	11

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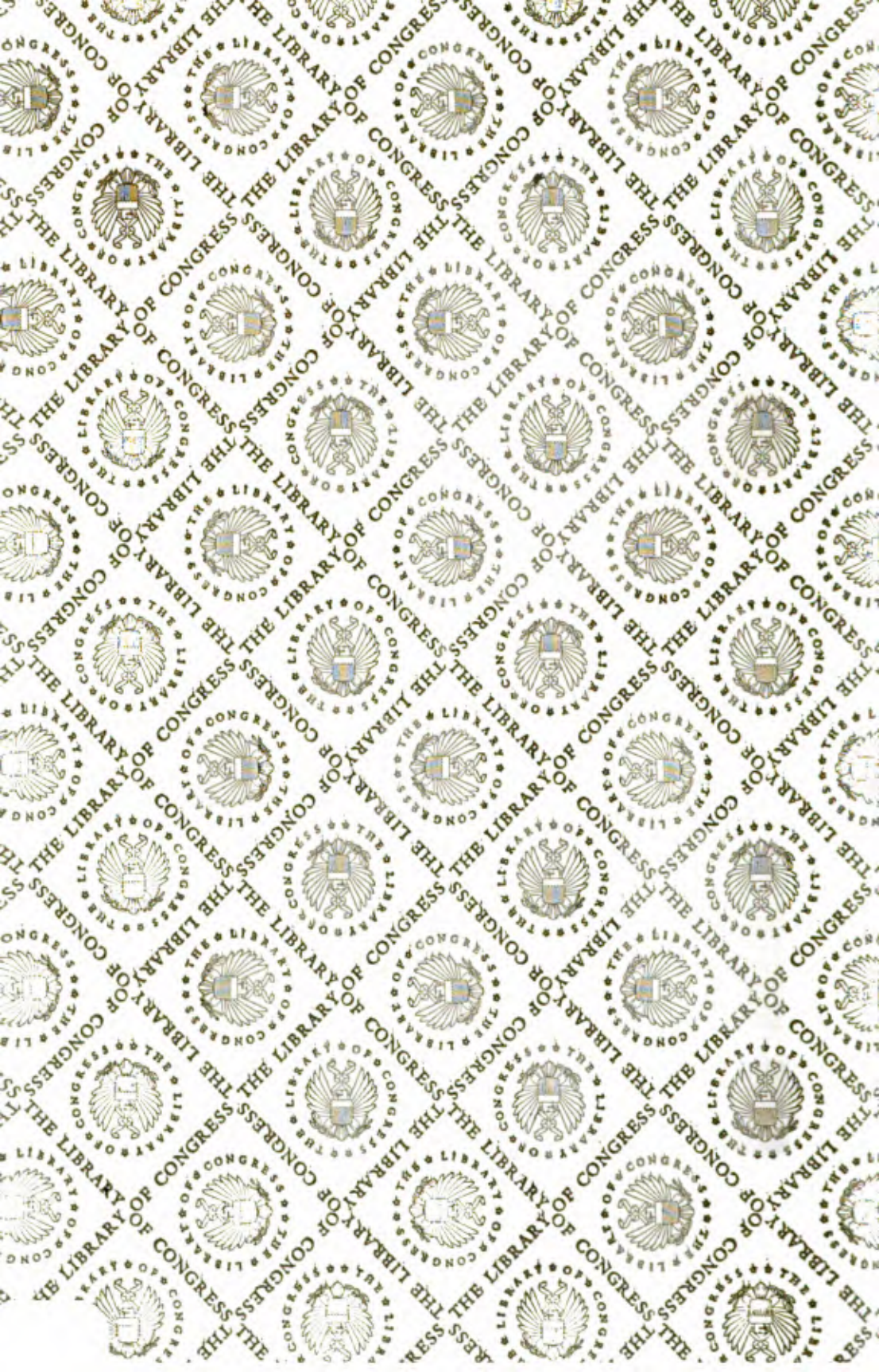
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